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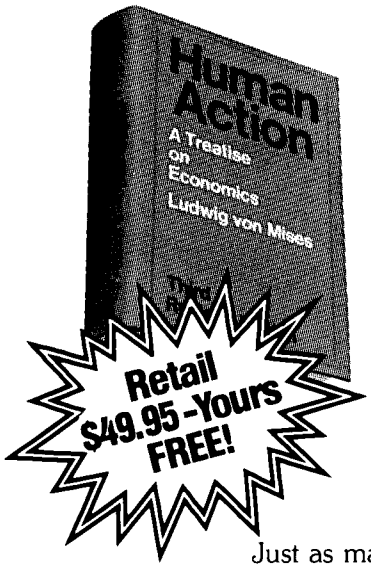

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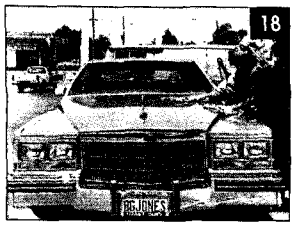

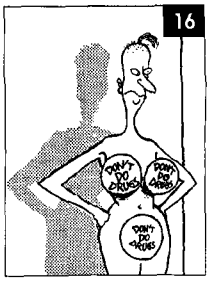

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Illogical Deductions

By Virginia I. Postrel

The tax credit trap

When the Republicans announced their Contract with America, Rep. Dick Armey attacked the old Democrat-dominated House for having "adopted as its central philosophy the belief that ordinary people cannot be trusted to spend their own money and make their own decisions."

The Republicans, he said, "propose to cede back power from the hallowed halls of Congress to the more hallowed kitchen tables of America, where night after night families bow their heads in thanks and make decisions about education, charity, jobs, spending, debt, and values with a wisdom and compassion that no number of agency heads, cabinet secretaries, or members of Congress could ever match."

Unfortunately, Armey was speaking mostly for himself. The Contract itself is proof positive that most Republicans still have a long intellectual journey to make before they really cede power to the kitchen tables of America.

Deep down, most Republicans are still in love with planning other people's lives, setting other people's priorities, making other people's decisions. But unlike the Democrats, with their alphabet soup of bureaus, Republicans rely primarily on a single government agency to manipulate public behavior: the Internal Revenue Service. And, oddly enough, letting the IRS enforce their vision of how Americans should live makes Republicans look like good guys, bearing gifts.

Consider the "American Dream Restoration Act," promise number five of the Contract. Among its provisions, this bill would exempt from income taxes the interest earned on "American Dream Savings Accounts"—money set aside for retirement, post-secondary education, medical care, or a first home. Republicans point to this provision, along with such "pro-family tax reforms" as a $500-per-child tax credit, when asked how their pledges will affect individual Americans.

"Our act," says the Contract, "is designed to deliver relief from the heavy burden of government and let families keep more of their hard-earned dollars *to pursue their own version* of the American dream." (Emphasis added.) Unfortunately, that talk about "their own version" is mostly boiler plate; Congress will determine which dreams are worthy of tax breaks. If you save to start a business, buy a car, send your kids to parochial school, pay for your daughter's wedding, or move to a larger house, you'll get hammered with the usual taxes.

The impulse to direct the financial choices of a quarter billion Americans is just too strong for most Republicans to resist. Even anti–income-tax Ways and Means Committee Chairman Bill Archer wants to bias the tax system in favor of saving money and against spending it.

And it's no accident that Newt Gingrich started nodding (not nodding off) during the State of the Union address when President Clinton plugged his own scheme to allow tax deductions for college tuition. Gingrich and Clinton agree that education is more important than other goods and services; both are, after all, former teachers. So Gingrich is at least intuitively attracted to Clinton's scheme.

Such schemes do sound appealing, and they can be an excellent way of buying votes. Who, after all, wouldn't like to keep more money from the tax man—especially to use it for such a worthy, and expensive, cause?

But tax credit schemes are snares. Their underlying premises are dangerous, their practical results often malign.

By lowering the apparent cost of tuition to students, for instance, the tuition deduction would simply let colleges raise their prices. The supply of college admissions slots is pretty much fixed, at least in the short run. And a fixed supply means that any increase in demand driven by the deduction will simply be reflected in higher prices. Knowing that they'll get a tax break, students (or their parents) will be willing to pay more for tuition—at least in nominal terms.

Distorting Americans' investment decisions through the tax code can have disturbing ripple effects, as several regions of the country discovered when housing prices collapsed in recent years. Luring people to take on six-figure mortgage debts by making the cost of owning equivalent to renting, after the mortgage-interest deduction, may promote bourgeois stability. But it also turns otherwise risk-leery average Americans into speculators. And if the local economy goes into recession, these speculators get stuck with mortgages they can't unload just when finding a job elsewhere means selling a house. American Dream accounts that favor first-time purchasers over other home buyers will only distort the real-estate market further.

And once such distortions exist, people come to count on them. When the 1986 tax reform eliminated tax benefits for commercial real estate, the value of office buildings plummeted, costing many people their businesses.

Dumping the mortgage-interest deduction would slash the market value of homes, which is artificially inflated because dollars spent on mortgage interest go farther than dollars spent on rent (or anything else). And that abrupt drop in national wealth, however unreal, could have devastating economic and psychological

An open letter on the Second Amendment.

An Individual Right To Arms?

The view that the Second Amendment[1] to the Constitution of the United States guarantees only the states' right to maintain formal militias has attained a surprising respectability. That may be more explicable as an expression of the hostility many academicians feel towards guns and their owners than as an unbiased constitutional interpretation. The Second Amendment does not guarantee merely a "right of the states," but rather a "right of the people," a term which, as used throughout the Bill of Rights (e.g., the First and Fourth Amendments), is widely understood to encompass a personal right of citizens.

Moreover, the Amendment refers to the "militia," a term which in the 18th century meant not a formal military unit like the National Guard, but a system under which every household and every man of military age was required to own a gun in order to defend the community against tyranny, foreign invasion, and crime. The leading interpretations before Congress when it enacted the Bill of Rights affirmed that by the Second Amendment "the people are confirmed in their right to keep and bear their private arms" — "their own arms."[2]

Furthermore, the "individual right" component of Second-Amendment thought became even more prominent in constitutional theory due to the transformation wrought by and through the debates in the Reconstruction Congress concerning the privileges and immunities of national citizenship. Many Congressmen pointed out that blacks in the South needed to be constitutionally protected in the citizen's individual, personal right to bear arms in self-defense.[3]

Of course, the right to bear arms is no more "absolute" than is the right to speak, to publish, or to assemble. Hence, there is room for disagreement over the scope of Second-Amendment rights, just as there currently exists legitimate disagreement over the scope of the First-Amendment rights of assembly and free speech.[4] Nothing in this statement, therefore, is intended to deny either the constitutionality of, or the need for, sensible gun laws.

1. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. 1 Stat. 21 (1848)
2. Kates, "Handgun Prohibition and the Original Meaning of the Second Amendment," 82 *Mich. L. Rev.* 204, 214, 223-224 (1983). *See generally* Amar, "The Bill of Rights as a Constitution," 100 *Yale L.J.* 1131, 1162 ff. (1991); Levinson, "The Embarrassing Second Amendment," 99 Yale L.J. 637 (1989); L. Levy, *Original Intent and the Framers' Constitution* 341 (1988); S. Halbrook, *A Right to Bear Arms: State and Federal Bills of Rights and Constitutional Guarantees* (1989).
3. Cottrol and Diamond, "The Second Amendment: Toward an Afro-Americanist Reconsideration," 80 *Georgetown L.J.* 309 (1991).
4. *See, e.g.*, Kates, "The Second Amendment: A Dialogue," 49 *Law & Contemp. Probs.* 145 (1986).

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ramifications. Even people who were inarguably better off under a flat tax, as Armey likes to point out most homeowners would be, would feel poorer. The more trimmings the Republicans slap on the Internal Revenue Code, and the more people come to count on them, the harder it will be ever to get the IRS out of the behavior-modification business.

ANY REFORM OF GOVERNMENT TAXING and spending disrupts some people's plans, as subsidy-dependent farmers and public-radio station operators will be quick to point out. So the Republicans may never actually deliver a tax package that treats all American dreams equally. But they can avoid making things worse.

Take a notion circulating in the intellectual circles around Gingrich: giving taxpayers a credit for donations to charities designed to help the poor, as an alternative to welfare. This sounds like a clever plan. But it has serious problems.

First, it assumes that earning a living in America means you have a obligation—not out of empathy or ethical conviction but out of fear of prison—to contribute some of your earnings to "the poor," through either the government or a private charity. And it assumes that the best way to help poor people is to give them money or services through nonprofit or governmental organizations—not to hire them, buy from them, or help educate their children, to suggest just a few alternatives. Both of these assumptions are decidedly arguable propositions.

And the pragmatic considerations are daunting: Who gets to determine which organizations deserve the credit, using what criteria? If I give money to Doctors Without Borders, which does relief work around the world, does that count, even though it doesn't help Americans? What about educational institutions? Don't they help the poor? And what about religious organizations, the greatest recipients by far of Americans' philanthropic dollars—must they keep separate books on their "spiritual" and "secular" activities? Won't the credits-for-charity scheme distort the tax code in favor of the social gospel?

Ever since the early '80s, the accepted Republican alternative to every alleged social problem, from health care to child care, has been some kind of tax credit or super-IRA. Certainly, letting people keep more of their own money is not the same as loosing regulators on them, nor is it the same as doling out other people's money in return for favored behavior.

But the deal the Republicans offer is troubling: Spend on the right things, and you get to keep your money. Spend on the wrong ones, and you send more of it to Washington. That sounds good to people who don't like taxes, which is to say to nearly everyone. But, while it may reduce some people's taxes, it does little to roll back federal power. It leaves Congress in charge of kitchen-table priorities.

Artistic Licenses

By Nick Gillespie

Culture yes, government no

THESE DAYS, IT SEEMS THAT SUPporters of the National Endowment for the Arts and the Corporation for Public Broadcasting cannot finish a sentence without telling you what great "bargains" and sound "investments" those organizations represent.

NEA Chairwoman Jane Alexander never tires of pointing out that her agency's draw of $167 million breaks down to "64 cents" per taxpayer—"the price of two postage stamps." "Our small investment reaps enormous returns," she says. And CPB's allowance of $285 million works out to only "$1.09 per person, per year, 80 cents of it for television, [29 for radio]" says Ervin Duggan, the chief ex-

ecutive officer of the Public Broadcasting Service. "If you bought just about any Sunday newspaper in the country,...you paid more for that newspaper than you paid for public broadcasting in an entire year."

But even as they try to dazzle you with bargain-basement budgeting, NEA boosters and PBS fans also feel an urgent need to inform you that much more is on the line than the infinitesimal amount of money these programs soak up: *Civilization* itself hangs in the balance. The barbarians are howling at the gates once again, and this time they're registered Republicans. If we fail to maintain—or, better yet, increase—current levels of public spending on the arts, radio, and TV, imply the aesthetes, we will usher in the new Dark Ages.

"[Newt] Gingrich is the Second Coming of Attila the Hun," proclaims minimalist artist Sol LeWitt to *The Village Voice*. Painter Chuck Close asks the rhetorical question, "Are we destined to become a nation of boobs, rubes, and philistines?" "We must not let this new crop of petty-minded, misguided destroyers of culture dismantle [the NEA], one of the few things that is still good and beautiful in this country," fumes an angry letter writer to *The Buffalo News*.

"PBS remains the only channel in front of which it is entirely safe to park your child," claims *The New Republic*'s Michael Lewis. PBS's Duggan, who likens the elimination of federal funds to "assisted suicide," tells us that public broadcasting is a counterweight against "steadily coarsening, ever more tawdry popular culture."

"All great civilizations have supported the arts," Barbra Streisand lectures an audience at Harvard. "There's [something] Gingrich, [Majority Leader Dick] Armey and company don't like to stress," opines the *San Diego Union-Tribune*'s theater critic, Michael Phillips. "Among all First World nations, America spends the least on federal arts support per citizen. If we say no to culture, America will be alone in saying so."

CHIP BOK

Given today's budget-conscious mood, shifting the debate away from issues of funding to questions of cultural survival is a clever strategy. After all, the argument that some subsidies—such as those for the arts or public broadcasting—are so small they don't matter doesn't hold much water these days.

RHETORICALLY, IT MAKES MORE SENSE TO lay claim to a higher purpose worthy of sacrifice, such as educating brutish Americans in the finer things of life. And there's little question that GOP leaders such as Gingrich, Armey, and long-time NEA foe Jesse Helms seem to relish their roles as philistines in this tedious morality play. Indeed, it's difficult to shake the sneaking suspicion that their idea of fine art begins and ends with portraits of poker-playing dogs.

Unfortunately for the aesthetes, the cultural-survival argument founders just as badly as its too-small-to-matter counterpart. For starters, there's no question that "the arts" would survive the demise of the NEA. In 1989, when the Corcoran Gallery in Washington, D.C., declined to mount a Robert Mapplethorpe retrospective because it might have endangered NEA funding, the Washington Project for the Arts showed it instead. More recently, when a theater in Cobb County, Georgia—Gingrich territory—lost $40,000 in county-level grants, it more than made up the difference through donations.

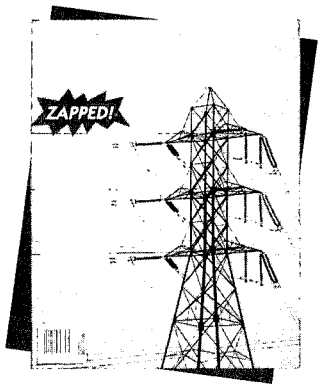
It's also tough to swallow the idea that the "best" PBS offerings (*The MacNeil/Lehrer Newshour*, *Barney*, *Sesame Street*) wouldn't be picked up by broadcast or cable TV. And it's a stretch to suggest that National Public Radio programs such as *Car Talk* and *Prairie Home Companion* are landmarks of a superior civilization.

But NEA and CPB advocates make an even more fundamental error than claiming art's fate is hostage to Beltway politics. They ignore the very basic, very obvious, and very relevant fact that the American people have exceedingly deep pockets when it comes to funding the arts. Regardless of spending by the federal government, we are already vigorously supporting the arts.

In 1993, for instance, this proud race of philistines shelled out $340 billion on entertainment, according to *Business Week*. There's no doubt that a fair chunk of that money went toward "tawdry popular culture," such as the Hollywood movies Ms. Streisand produces, directs, and stars in. But it also reflects trips to art-house cinemas, "legitimate" theater, concerts, spoken-word performances, and art museums, not to mention the purchase of edifying books, video/audio tapes, and compact discs.

And, also in 1993, individuals, foundations, and corporations donated a total of $9.57 billion for arts, cultural, and humanities programs, says the AAFRC Trust for Philanthropy. PBS's Duggan boasts that "PBS has between 5 to 6 million contributing members nationwide...very few of them rich, who give generously for something they could get for free." He's right: In 1993, they gave $391 million to the CPB. Businesses and foundations kicked in another $302 million and $100 million, respectively.

Given that gargantuan level of voluntary arts gift-giving, the question isn't whether the United States will just say no to culture. The question is, Why, in an age of self-consciously subversive art and adversarial journalism, do artists and critics feel a hypocritical need to pursue government funding as a seal of approval? ®



Washington Waves

The article "Shock Waves" by Carolyn Lochhead (Jan.) is simply the best analysis of the bushwhacking that occurred on November 8 throughout this great country. You do not need to read any more articles to get the complete picture. Only two pages long, it should be inserted into every new history book published in the next century. Bravo, Lochhead!

C. Russell Farmer
Spartanburg, SC

Rick Henderson ("Sobriety Test," Jan.) offers several issues the Republicans must confront if they are serious about cutting government. All good thoughts. But I'll believe all this talk about giving government back to the people only when I read that Washington-area real-estate prices are in free fall. And when I see angry government employees marching on the Capitol to protest massive layoffs. Yes, Virginia, this is no time to be responsible or polite ("Washington Traps," Jan.). We need insurgents, guerrillas. Are these new Republicans up to the job? My optimism is leavened with skepticism. History shows us that few can resist the siren song of power.

Marc Beauchamp
Palm Desert, CA

AIDS Causes, Continued

As a physician and medical researcher who is *not* a part of the AIDS-research establishment, but who has made a study of the HIV/AIDS controversy, I was pleased to see REASON tackle the issue ("What Causes AIDS?," June 1994 and "What Causes AIDS: The Debate Continues," Dec.). Let me add a few points:

1) The idea that AIDS in gay men is caused by illicit drug use rather than a virus can be tested by examining the statistical effect of drug use on AIDS risk *after* HIV infection. For AIDS risk to be associated with drug use *before* HIV infection but then become independent of drug use *after* HIV infection suggests that HIV is the critical element, and drug use is simply a marker for behaviors that transmit HIV. We have at least six studies which find exactly such results (for non-IV drugs). Also, the 1993 study discussed in REASON found that immune decline over time in groups of San Francisco men is purely a function of HIV status and has no association with drug use after HIV status is taken into account. This pattern held for the years before AZT became available in 1987, so HIV status was not merely a marker for AZT use, as critics occasionally suggest.

2) Many AIDS risk groups such as hemophiliacs and transfusion recipients and their spouses are *not* heavy drug users. To explain hemophilia-associated AIDS, authors Thomas, Mullis, and Johnson abandon Occam's razor and postulate that the hemophilia AIDS epidemic results from a *second* mechanism (this time, gross immune failure due to clotting-factor treatment), which is supposed to have begun to operate at significant levels in hemophiliacs just as the new epidemic of immune deaths exploded among gay men. Even though AIDS appeared epidemically in hemophiliacs and homosexuals a few years after we know a silent epidemic of HIV infection hit both groups almost simultaneously, skeptics nevertheless reject the simple body-fluid borne infection hypothesis in favor of a complicated one, in which the new epidemic of AIDS has as many separate causes as risk groups, and appears at the same time in each coincidentally.

Can we test the clotting-factor causation idea? Just as is the case with drugs, at least two studies find that hemophiliacs who become HIV-positive go on to develop AIDS, years later, *independently* of how much clotting factor they use after becoming HIV-positive. This again implies that any association between AIDS and clotting-factor consumption prior to HIV infection results simply from the increased probability of contracting HIV the more infected clotting factor is used. After the virus is in the body, clotting-factor use becomes statistically irrelevant, as a viral hypothesis would predict.

Nor does AIDS look toxin-mediated to the epidemiologists, who know that exponentially rising rates of disease are typical of beginning infectious disease epidemics. Ten to 15 years of previous drug use in gay men, even if immunotoxic in ways that cannot be seen in animals, hardly explains the exponential increase in AIDS cases noted in the first four years of AIDS. Similarly, the crude death rate in hemophiliacs during the first quarter of 1984 was nine times what it had been for each of the two preceding years—an abrupt phenomenon not explainable on the basis of a treatment which had first been introduced into this population with wide time variability, more than a decade before. The AIDS plague in hemophiliacs was both real and sudden.

Which brings us to a factual correction: Thomas et al., following Peter Duesberg and Robert Root-Bernstein, have absurdly claimed that "hemophiliacs in the age of AIDS are living longer than they ever did in the past," a myth apparently universal among HIV/AIDS skeptics. In fact, due to clotting-factor treatment, life expectancy

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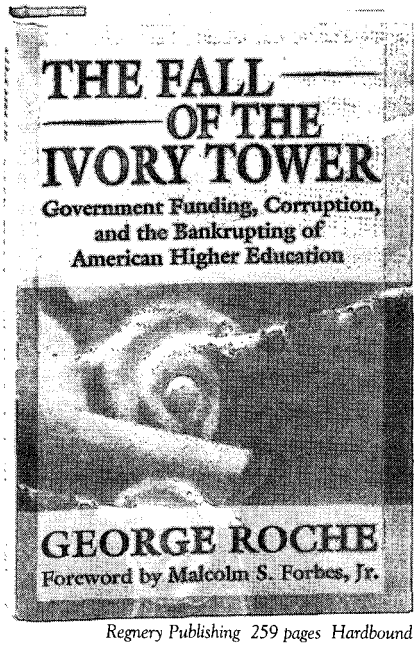
in hemophiliacs had risen to nearly normal by 1979, just before the era of AIDS, but fell for the first time in the later 1980s and now has fallen to a figure less than it was before World War II. About half of all clotting-factor–using hemophiliacs were infected with HIV in the seven years before factor concentrate was purified of virus in 1985; since then, between one-fourth and one-third of these infected people have died of AIDS.

3) Hemophilia is not the only problem for HIV/AIDS critics, for data from transfusion AIDS victims also needs explaining. In 1984, even before a commercial HIV-virus test had appeared, a landmark study was published which compared people who developed AIDS after blood bank transfusion with people who had been transfused equally from the same blood bank but remained well. It was found that AIDS victims were far more likely than healthy transfusion control cases to have gotten blood which came from "high-risk activity" donors, such as self-injecting drug users or promiscuous gay men. Only a hypothesis involving infectious microbe(s) plausibly explains a firm statistical link between disease development in blood recipients years after transfusion and the lifestyles of blood donors they had never met.

4) There are reasons other than epidemiologic ones to think that HIV causes AIDS. Despite denial by Thomas et al., there *are* animal models for HIV/AIDS of similar quality to animal models for most diseases. Since viruses are generally more species specific in action than drugs, lab-animal virus infection models must usually use animal viruses. Fortunately, HIV is but one member of a family of related nine-gene slow-acting brain-infecting mammalian retroviruses ("lentiviruses") which are very similar to each other in structure, genetics, and appearance. Several of these also (just coincidentally) cause animal immunodeficiency syndromes as close to human AIDS as it is realistic for an animal to exhibit. The feline immunodeficiency virus (FIV) and simian immunodeficiency virus (SIV) cause deadly immunodeficiency diseases in domestic cats and Asian monkeys, respectively.

The destruction of immune systems by FIV and SIV models the human immune destruction seen in AIDS better than that produced by any other known immunosuppressant treatment in animals. Cats and Asian monkeys infected with FIV or SIV preferentially lose CD4 lymphocytes, and are afflicted with viral brain lesions, wasting, lymphadenopathy, lymphomas, and infections. Monkeys develop CMV viral retinitis, *Pneumocystis* pneumonia, M. Avium disease, disseminated candida, and cryptosporidial intestinal disease. All these are opportunistic infections not common in monkeys, and almost unknown in young humans before AIDS (they are very common in AIDS). Most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Foreword by Malcolm S. Forbes, Jr.
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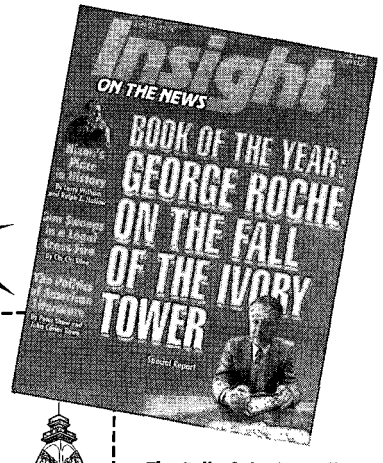

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significantly, all these pathologies happen in monkeys due to levels of lentiviral activity much like those in HIV-infected humans, so there is nothing about human HIV infection that contradicts the possibility of a similar virus-caused immune destruction mechanism operating in humans.

Ignoring such similarities, Thomas et al. deny the animal models of AIDS by focusing on latency period. They incredibly call latency studies "tall tales," though even the classic original slow virus findings in Icelandic sheep have by now been well confirmed, with up to eight-year latencies being demonstrated for experimental infections. Duesberg denies the existence of *any* latent viral disease syndrome following host serum immunity, thus denying the findings of dozens of research groups on slow retrovirus infection in sheep, goats, horses, cows, cats, and monkeys (Duesberg, disbelieving in slow viruses, insultingly calls all these scientists "slow virologists"). Thomas et al., following Duesberg's idiosyncratic and unaccepted view in the matter, go so far as to proclaim that in monkeys "SIV disease follows the primary infection closely"—a generalization contradicted by many independent reports. While experimental SIV disease in monkeys *may* cause simian AIDS rather immediately (just as HIV does occasionally in humans), SIV may also cause immune-failure death up to three years after initial infection and after a previous good immune response. Deaths in closed colonies of monkeys due to SIV infection (and also in the face of good immune response) have been recorded after latencies of up to seven years. In FIV in cats, another slow virus model, the latency for immune failure, lymphoma, and death after experimental infection is 18–24 months and may be as long as three years. Again it occurs long after the apparent full recovery with good immune response that follows primary FIV infection in cats.

5) Can it be coincidence that HIV, which is the closest human relative to the simian immune-system–destroying retrovirus SIV, is the virus most commonly found throughout every class of AIDS patient? It is true that the more familiar strain of HIV, called HIV-1, infects but does not cause severe illness in monkeys (just as yellow fever does not). However, preliminary reports from several labs now show that HIV-2, a related retrovirus isolated from many AIDS patients in West Africa, does indeed cause death from immunodeficiency when injected into Asian monkeys. It would be a stupendous coincidence if HIV-2 causes immune failure and death in both humans and animals, while at the same time HIV-1, the related strain found in U.S. serum-exposed patients who are severely immunodeficient, is a harmless bystander —yet this is the suggestion of the skeptics. May we now hear from them an admission of probability that at least *HIV-2* is a likely cause of some AIDS cases, if not HIV-1?

I suspect no such admission will be forthcoming, when Thomas et al. assert that lab animals "tend to have weakened immune systems," a statement perhaps meant to invalidate any lab-animal experiment showing immune suppression results which threatens the authors' hypotheses. In domestic cats, FIV was first isolated from cats in a household with dying pets, and it also causes disease in feral animals, so it is hardly an artifact of the laboratory setting. Still, if we cannot trust laboratory retrovirus infection data, what are we left with? The authors dismiss *epidemiological* results they don't like as mere "correlation." Skeptics have thus carefully set a task for science which may be impossible, for it is always possible to find faults and differences in any laboratory animal model and always possible to find something not carefully enough controlled in any epidemiologic study.

6) HIV/AIDS skeptics say that what they want most is new definition of AIDS not involving HIV, so let us here suggest one for heuristic purposes. Our task is to decide what disease entity it is we're trying to nail down with a definition, and why. Two characteristics stand out: 1) The new disease which emerged from obscurely low levels in 1981 in the United States was *acquired*, meaning that it occurred epidemically in previously well people who had had intimate contact with body fluids of others who were to develop the same syndrome, and 2) this new plague was a *severe* immunodeficiency which was invariably fatal.

How do we gauge "severe" (life-threatening) immune problems, for purposes of definition? We can crudely quantify immune function and project what degrees of loss are dangerous and predictive of death with a simple count of the CD4 blood lymphocytes. An immunologically healthy person's CD4 count is perhaps 1,000. Less than 200 is critically low and can be termed "immune failure," because this is the approximate number below which opportunistic-infection fatalities are increasingly seen. Most AIDS patients actually travel far beyond this boundary: Today, fully 85 percent of AIDS patients survive long enough to see their CD4 counts fall below 50, with some going all the way to a count of zero before death. It is these patients with life-threatening immunological destruction and very poor prognosis who constitute the core of what most people mean by "AIDS."

If we define "AIDS," then, as otherwise unexplained immune failure in body-fluid–exposed people, we will capture in our definition at some point during life almost everyone who ultimately dies as a result of this syndrome, and we will diagnose almost no one who has more than several years life expectancy. Thus, our definition will do the main job. Moreover, using this definition, we find that the fraction of "AIDS" patients who just happen to have HIV is essentially 100 percent, so we do not have to deal with "HIV-negative AIDS." Why, then, don't critics who don't want to talk about HIV tests use this stringent HIV-free definition and be done with it?

The answer, possibly, is that it would leave them with nothing to complain about. Critics *want* the existence of HIV-negative AIDS, and in order for this phenomenon, so dear to skeptics, to exist, "AIDS" must be defined by much less-

strict criteria than we just proposed. Critics are always happy to do just that. As example, consider the 90 or so HIV-negative people in the United States who have been identified so far with CD4 counts less than 300 (not the critical 200 for AIDS, but approaching it). It was pointed out in REASON by the letter from CDC scientists (Dec.) that these people with "ICL" are epidemiologically different from AIDS sufferers, a statement which Thomas et al. dismiss as meaning "apparently that they are not linked to HIV." Not so. The problem is that ICL sufferers have no evidence of an *acquired* problem—they are not only HIV-negative but they are also not gay men, drug users, hemophiliacs, or transfusion recipients either, so their existence is as detrimental to the REASON authors' alternate AIDS-causation case as it is to the case for HIV.

There are similar problems with modifying the entire CDC AIDS definition by simply removing any mention of HIV—also a favorite ploy of critics. The problem is that HIV status in the CDC definitions is not there just to make skeptics unhappy and uphold the HIV theory; it also has a prognostic value for people with moderate immune problems and disease. If HIV-negative, such people may recover or at least get no worse over the long term, but if HIV-positive they invariably become more immunocompromised, and die within a few years.

Although Thomas et al. do not pause overlong to wonder *why* HIV is the only virus infection of moderately immunocompromised people that has such prognostic value for future total immune failure, they do admit the association. Certainly, then, they should understand why it is unfair to remove a criterion which is doing prognostic work in a disease definition, then make much of the fact that the resulting mutilated set of criteria no longer does what it was designed to do. It is this kind of thinking which allows critics to suggest that many HIV-negative people in the 1993 San Francisco study really had "undiagnosed AIDS" because they developed some of the milder "AIDS-defining diseases." Again, however, no one ever suggested that all diseases that are AIDS-associated secondary diseases are *by themselves* prognostic of future immune failure and death. The point of the San Francisco study was not to find which group(s) has any opportunistic-type diseases, but rather to see which group(s) inexorably suffers progressive immune function loss and high mortality, which is closer to what we all recognize as AIDS.

It is best to leave secondary diseases out of the definition of AIDS entirely if HIV status is also not included, yet critics persist in doing this, and may even go further. Duesberg has gone so far as to count many clinically healthy people with only mild immune abnormalities as "HIV-negative AIDS," when, contrary to what the REASON authors assert, such cases would not be called AIDS today, even if HIV-positive. Duesberg has gotten a lot of mileage out of his "HIV-negative AIDS" cases (as we see), and he chooses to make his AIDS definition broad enough that as many as possible of his "AIDS" cases don't have HIV. We, however, are certainly not obligated to do the same.

In summary, if we are not allowed to use HIV status, then defining AIDS stringently in terms of an acquired worsening immune failure (a CD4 count of less than 200) still preserves the prognostic boundaries of the fatal syndrome of AIDS long familiar to the man on the street. Thomas et al. may carp about problems with official CDC AIDS definitions, but they are actually carping about modifications of official definitions which they made themselves by subtracting HIV testing. Let them make better definitions, for surely there is something perverse about choosing a definition that is so overbroad as not to be useful, then blaming the establishment that it is so overbroad as not to be useful. The important fact for the rest of us is that people dying of immune failure for no other obvious reason in body-fluid–exposed groups are invariably HIV-infected.

7) I thought the Thomas/Mullis/Johnson article an unusually bitter one for REASON to be running, since its authors suggest not only that the U.S. government has failed with AIDS but that just about everyone else has failed to think properly as well. The authors essentially suggest that the scientific method itself failed when it has come to this problem—that instead, hundreds of independent working groups in public and private labs in scores of countries are even now participating in the same shared conspiracy or mass delusion. Supposedly, every major HIV study lab has been afraid to acknowledge openly that the emperor has no clothes. Does this really seem likely to the reader? I am strongly reminded of the conspiracy theories of creationists and UFO-coverup enthusiasts when I read this kind of thing.

Although I live in the world of institutional biomedical research, I don't find it to be the same conspiratorial one I read about in the Thomas/Mullis/Johnson article. Knowing how competitive biomedical researchers are, I prefer a different explanation for the present state of AIDS understanding—HIV infection just happens to be a really hard biological problem. However, progress *is* being made. According to recent news reports, a second controlled study has now confirmed that sterilized plasma from well HIV-positive people improves health and extends life considerably in AIDS patients. This is just as we might expect from knowing how HIV normally escapes its host's antibody immune response in AIDS, but yet might still be susceptible to anti-HIV antibodies transferred in plasma from someone else. Globulin protein (antibody) therapy has been tried in AIDS patients in the past, but was not very helpful, apparently since it contained no anti-HIV antibodies. I predict that the success of immunologic therapies targeted specifically against HIV in AIDS is shortly to make drug-induced AIDS theories even harder to believe.

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(Footnotes to Dr. Harris's letter are available upon request. Please send a

stamped, self-addressed envelope to REASON's Los Angeles office. —The Editors)

Charles Thomas, Kary Mullis, and Phillip Johnson reply: To evaluate Dr. Harris's specific points, one must have in mind what the HIV hypothesis is and why it is in question. The hypothesis attributes extraordinary powers to the retrovirus HIV, powers that no other organism has ever been suspected of possessing. This virus multiplies rapidly after the initial infection until the immune system does its job and neutralizes the infection. HIV does no damage to the immune system while it is active in the body; rather, it is supposed to cause immune system damage years later, when it is latent and often very difficult even to find. HIV is also supposed to cause disease conditions, such as dementia, that are not a result of immune system damage, and is even held responsible for diseases like Kaposi's sarcoma which have been linked to other causes and occur in men who are HIV-infected and non-infected alike. Researchers have no idea how HIV accomplishes all these feats. The initial assumption that HIV directly attacks and kills T-cells has been discarded by many since HIV infects only a fraction of the cells it is supposed to be killing, but the direct-killing scenario is still pursued because all alternatives are speculative.

The proof that HIV causes AIDS is said to be correlation, but the correlation is mainly an artifact of the definition. AIDS is defined as one of 29 different disease conditions, or low T-cell counts, when accompanied by real or suspected HIV infection. The correlation is to antibodies and not to active virus, and the antibody tests generate many false positives.

In short, there are many problems with the HIV theory, and the problems have never been fairly investigated. Persons who are disposed to question the official theory have been treated as enemies to be ridiculed and punished. There are no truly independent researchers, since to question the HIV theory is to lose all research funding.

Papers dealing with all of Dr. Harris's points and many others will appear in the February issue of *Genetica* devoted to questions about the HIV/AIDS theory and its difficulties. For present purposes we can give only brief responses to his specific points, as follows:

1) As to gay men: The original AIDS-defining disease in gay men was Kaposi's sarcoma (KS). It is now known, however, that KS is found in many persons who have never been HIV-positive, and just about everybody agrees now that KS is not caused by HIV. A herpes virus is suspected by many, but drugs (especially poppers) are very much under study as a causative factor despite a press blackout on the subject. Even in cohorts of gay men with multiple health risks, authorities now admit that at least 5 percent (some say 10 percent or more) of antibody-positive subjects are AIDS-free 15 years after infection and show no signs of ever developing AIDS. Among persons who are otherwise healthy, the percentage of so-called non-progressors is undoubtedly much higher. The claimed perfect correlation between HIV and AIDS was established by biased studies that failed adequately to investigate alternatives. What is needed are unbiased studies that compare otherwise similar HIV-positive and HIV-negative persons from the general population; this has never been done.

2) Hemophiliacs: In the upcoming issue of *Genetica*, Peter Duesberg reviews all the studies on the subject and shows persuasively that the data do not support HIV causation. Life expectancy for hemophiliacs went up steadily following the HIV infection that occurred with the use of Factor VIII, and began to decline in the late 1980s when hemophiliacs began being "treated" with the toxic drug AZT.

3) Transfusion recipients: There are no studies comparing otherwise similar groups of HIV-positive and HIV-negative transfusion recipients. There is no "firm statistical link," only anecdotal evidence.

4) So-called SIV disease: After chimps infected with HIV failed to develop AIDS, HIV researchers turned to claims that a different virus (SIV) causes a different pattern of disease in monkeys. SIV is harmless in these animals in the wild but sometimes causes disease under laboratory conditions. The condition is unlike AIDS in the most important respect: HIV is supposed to destroy the immune system years after neutralization by antibodies, often when viral activity in the body is undetectable. SIV causes disease when it is present in quantity and active.

5) HIV-2: This virus has not been shown to cause AIDS. Most persons infected with it are healthy.

6) New definition: We heartily endorse Dr. Harris's proposal of a new definition of AIDS not presupposing HIV causation, and predict that use of proper definition would cause the claims of correlation to disappear. Incidentally, the KS sufferers originally diagnosed with AIDS in the early 1980s were not "otherwise healthy." They were mainly highly promiscuous, drug-using, bathhouse-frequenting gay men with a multitude of diseases.

7) Cures and treatments: The HIV theory has led to no health benefits. Claims of treatments just around the corner have been made again and again. They have always proved false.

Correction

In the March editorial, "Future Shock," the first name of the author of *Complexity* was incorrect. The book is by M. Mitchell Waldrop.

DEVELOPMENT DIRECTOR

Reason Foundation, a market-based think tank and publisher of REASON, seeks a full-time director of development for major-gift solicitation, prospect research, and proposal writing. Additional duties include travel, budget management, and supervision of annual giving and planned giving. Candidates must be results-oriented, with a minimum of three years development/fundraising experience, good computer and organizational skills, and an outgoing personality.

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Clause and Effect

A Commerce Clause case may limit Congress's power.

By Nick Gillespie

GUN-OWNERSHIP CASES USUALLY REvolve around Second Amendment issues. But *United States v. Lopez*, currently under consideration by the Supreme Court, involves the 10th Amendment and the Constitution's Commerce Clause. Because *Lopez* may strongly limit Congress's ability to invoke its right to regulate interstate commerce, the decision may be one of the most far reaching in the post–New Deal era.

In 1992, Alfonso Lopez Jr., a 12th grader at Edison High School in San Antonio, Texas, broke the law by bringing a .38-caliber handgun to school. Although his action was illegal under Texas law, authorities charged Lopez with violating the federal Gun-Free School Zones Act of 1990. Lopez was convicted but appealed the decision on the grounds that the Gun-Free School Zones Act was unconstitutional.

Lopez's lawyers argued that the act invoked no delegated power of Congress for its authority. The government countered that the act was a legitimate exercise of Congress's constitutional power to regulate interstate commerce. The Fifth Circuit Court of Appeals ruled that the statute was outside the commerce power of Congress and an infringement of the 10th Amendment. The court also concluded that Congress could regulate intrastate activity only when it had a "substantial economic effect on interstate commerce."

"Our understanding," wrote the court, "of the breadth of Congress' commerce power is related to the degree to which its enactments raise Tenth Amendment concerns, that is concerns for the meaningful jurisdiction reserved to the states....[T]he Tenth Amendment, though it does not purport to define the limits of the commerce power, obviously proceeds on the assumption that the reach of that power is not *un*limited, else there would be nothing on which the Tenth Amendment could operate."

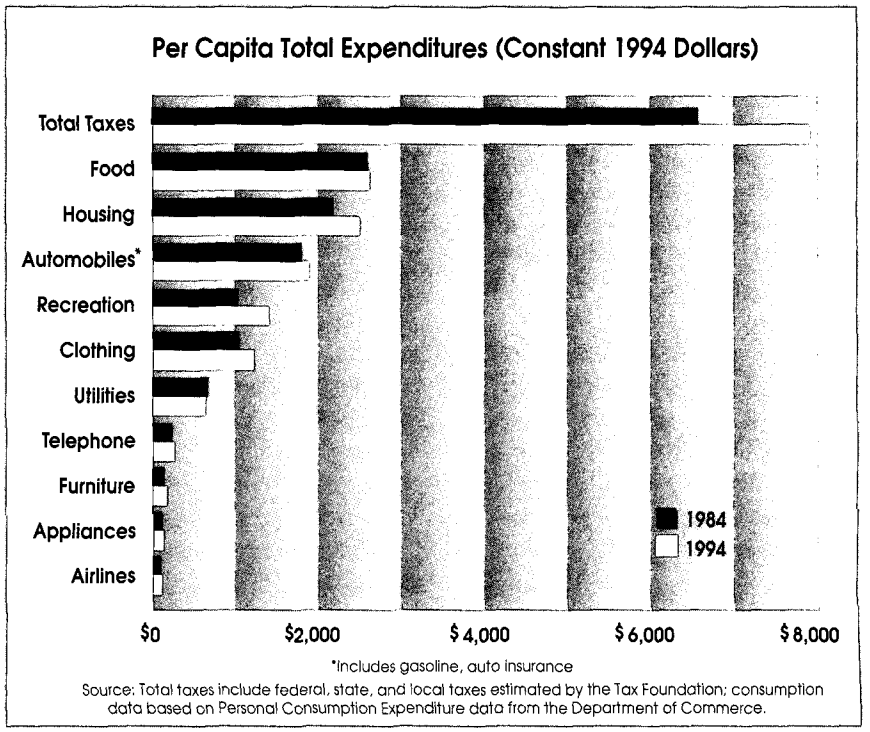
If the Supreme Court strongly affirms the appeals court decision in *Lopez* and limits the use of the Commerce Clause to laws actually dealing substantially with interstate commerce, the impact on the proliferation of federal criminal laws and regulations will be huge, says University of Tennessee law professor Glenn Harlan Reynolds. "Many of those laws and regulations won't be sustainable if the Court cuts back the Commerce Clause to something close to its original meaning," says Reynolds. The Supreme Court, which heard arguments in the case last fall, is expected to issue its decision late this spring.

Boost of Burden

Taxes lead rise in per capita expenditures.

By Nick Gillespie

Between 1984 and 1994, the average American's total tax bill rose faster than almost any other single expenditure. In constant 1994 dollars, taxes rose from $6,586 to $7,927, an increase of 20 percent. While the rate of increase in some expenditures outpaced the tax bite—per capita recreation outlays boomed 35 percent—federal, state, and local taxes far outstripped most other costs. In fact, in 1994, the average American spent more on taxes than food, housing, and clothing combined.



Private Matters

Prospects for federal privatization

By Ed Carson

REP. DANA ROHRABACHER (R-Calif.) has been trying to privatize the U.S. Postal Service ever since he was elected to Congress in 1988. But despite ever-increasing post-office horror stories of delays, lost or destroyed mail, and a dissatisfied work force, he has had little success.

Until recently, discussion of privatization at the national level was limited to think tanks and a handful of maverick congressmen such as Rohrabacher. But now with a Republican Congress and a president who is rediscovering 1992 campaign themes just in time for 1996, senior leaders at both ends of Pennsylvania Avenue are endorsing privatization of federal assets and services.

This year, the House Budget Committee under Rep. John Kasich (R-Ohio) will produce an ambitious privatization package that has a reasonable chance at passing. The budget is expected to include a proposal to privatize the air-traffic control system and make it wholly user-fee funded, to end subsidies for the Corporation for Public Broadcasting, and to sell off at least one of the five regional power marketing authorities—holding companies of dams and other electrical power plants—which would probably generate several billion dollars. Amtrak's subsidies also are likely to be reduced.

The Republican effort is greatly helped by Clinton's support for a number of privatization schemes. Before the 1994 elections, the administration proposed turning the air-traffic control system into a government corporation and has signaled recently that it is open to a fully private corporation. The Department of Energy plans to sell four of the power marketing authorities and convert the fifth into a government corporation. The DOE also is exploring the option of selling off the Naval Petroleum Reserve.

In fact, the most serious obstacle to passing privatization measures could be Republican members of Congress who are concerned about protecting government programs in their districts and committee chairmen worried about defending their new turf. Such misgivings over privatization and other budget cuts were behind the House Budget Committee's decision to delay the original late-January release date for its budget.

Rohrabacher believes that privatization supporters can't afford to scale back or slow down privatization plans: "If we think and act like revolutionaries, we will succeed. If we act like cautious reformers, we will fail." ◆

Outlawing the Federalist Papers

Can free speech be anonymous too?

By Brian Doherty

PUBLIUS WOULD HAVE TO WATCH HIS back in Ohio these days. The Supreme Court will decide this term whether or not to remedy this situation.

Early American patriots often used pseudonyms like Publius (used by Alexander Hamilton, James Madison, and John Jay when they wrote the Federalist Papers) when they advocated political change. But Ohio doesn't like the idea of anonymity in political pamphleteering.

One reason to crave anonymity in political speech is fear of reprisal from vengeful officials. In 1988, this fear came to life for Margaret McIntyre of Westerville, Ohio, a suburb of Columbus.

McIntyre was accused by an angry school-board official of distributing pamphlets against a proposed new school tax without putting her name on the pamphlets. The Ohio Elections Commission slapped her with a $100 fine.

Mrs. McIntyre—and her husband, who has carried on the case since her death in May 1994—took the case all the way to the U.S. Supreme Court. This term, the justices will decide whether the right of free speech includes the right to anonymous speech.

Not only Ohio and the McIntyres will be affected by the outcome. Twenty-seven other states with similar laws filed amicus briefs on behalf of Ohio. But David Goldberger of the Ohio State University College of Law, the McIntyres' lawyer on the case, stresses that even a decision in their favor wouldn't necessarily mean an end to bans of anonymous speech in political literature.

Most existing campaign-disclosure law kicks in only when the money spent hits a certain level, but Ohio's does not. Most states, Goldberger says, could adjust to a narrow ruling against Ohio by adopting a "tripwire amount"—a minimum amount spent on political speech under which their laws wouldn't apply. Arizona, he says, has already adjusted its law this way.

The decision could go either way. During hearings, Sandra Day O'Connor seemed most sympathetic to the McIntyres, forcing an admission, later denied, from Ohio's lawyer that the state would have prosecuted the authors of the Federalist Papers. Antonin Scalia, however, posited that since the law was passed by an elected legislature, and there has been no citizen movement to repeal it, the citizens of Ohio must want it. Ruth Bader Ginsburg countered that doubtless most Ohioans had never heard of the law.

Either way, the decision probably won't entirely eliminate restrictions on political speech. "It won't change the court's view that campaign limits aren't inherently unconstitutional," says Robert Peck of the American Civil Liberties Union, which sponsored the McIntyre lawsuit. ◆

Change Is Good

But government makes it tough.

By Nick Gillespie

DOES ECONOMIC CHANGE INEVITABLY mean economic dislocation? A new study by the Organisation for Economic Co-operation and Development, an international advisory group, concludes such change is natural, progressive, and salutary. Unemployment, says the report, stems from "policies...[that] have made economies rigid, and stalled the ability and even willingness to adapt."

The study surveys employment trends from 1950–95 in the 25 OECD countries (most of Western Europe, North America, Japan, Australia, and New Zealand) and finds that weaker performances in long-term employment, job growth, and other economic indicators reflect attempts to rebuff change.

"Motivated to protect people from at least the worst vicissitudes of economic life, governments, unions and businesses have progressively introduced labour market and social policy measures and practices which, in achieving their intended ends, also have had the unintended but more and more important side-effect of decreasing the economy's ability...to adapt," says the report.

The report makes a number of policy recommendations, all geared to maximize an economy's ability to adapt to change. They include: promoting flexible work schedules by reducing restrictive labor laws; encouraging entrepreneurship by "removing red-tape, regulations and controls that discourage new and expanding enterprises"; reducing non-wage labor costs such as social security and other payroll taxes; eliminating or varying minimum wages by age and region; and dismantling product-market barriers.

"The basic policy message of this report is unambiguous," says the report. "[U]nemployment should be addressed not by seeking to slow the pace of change, but rather by restoring economies' and societies' capacity to adapt to it."

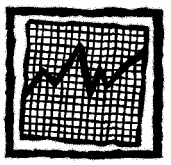
Balance Sheet

By Rick Henderson

Assets

Drug Bust. In 1973, New York state had 13,000 persons incarcerated; there are now 66,000 in state prisons. More prisoners are serving time for nonviolent drug offenses than for violent felonies. New Gov. George Pataki proposes overturning Nelson Rockefeller's tough mandatory sentences for repeat nonviolent drug offenders. Pataki would give judges discretion to sentence some inmates to treatment, community service, or house arrest.

Trade Bait. *Business Week* gives two reasons not to sweat the "record" trade deficit.



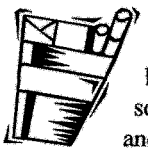
Last year, it reports, the U.S. economy "grew almost twice as fast as the economies of our major trading partners." American consumers demanded products the U.S. economy alone couldn't produce. And there's better news to come. The surge of imports is fueled by capital goods and raw materials American firms are converting into PC components and telecom equipment—tools that will make U.S. companies and employees even more productive.

Direct Dial. In India, where more than twice as many people own satellite dishes as telephones, the government opens its telecommunications monopoly to outside investment. AT&T, Fujitsu, and Siemens bid for half the scheduled $7.5-billion expansion in telecom. The government will announce the winning firm before April.

Fare Deal. After a state law opens the market, the Colorado Public Utilities Commission makes Freedom Cabs the first new taxicab operator in Denver since 1947. (See Trends, Aug./Sept.) The PUC permits Freedom Cabs to issue licenses for 50 new taxis this year and another 50 in 1996. Cincinnati also opens its taxi market: After passing safety inspections and meeting an insurance requirement, anyone can now legally own and operate a cab.

Liabilities

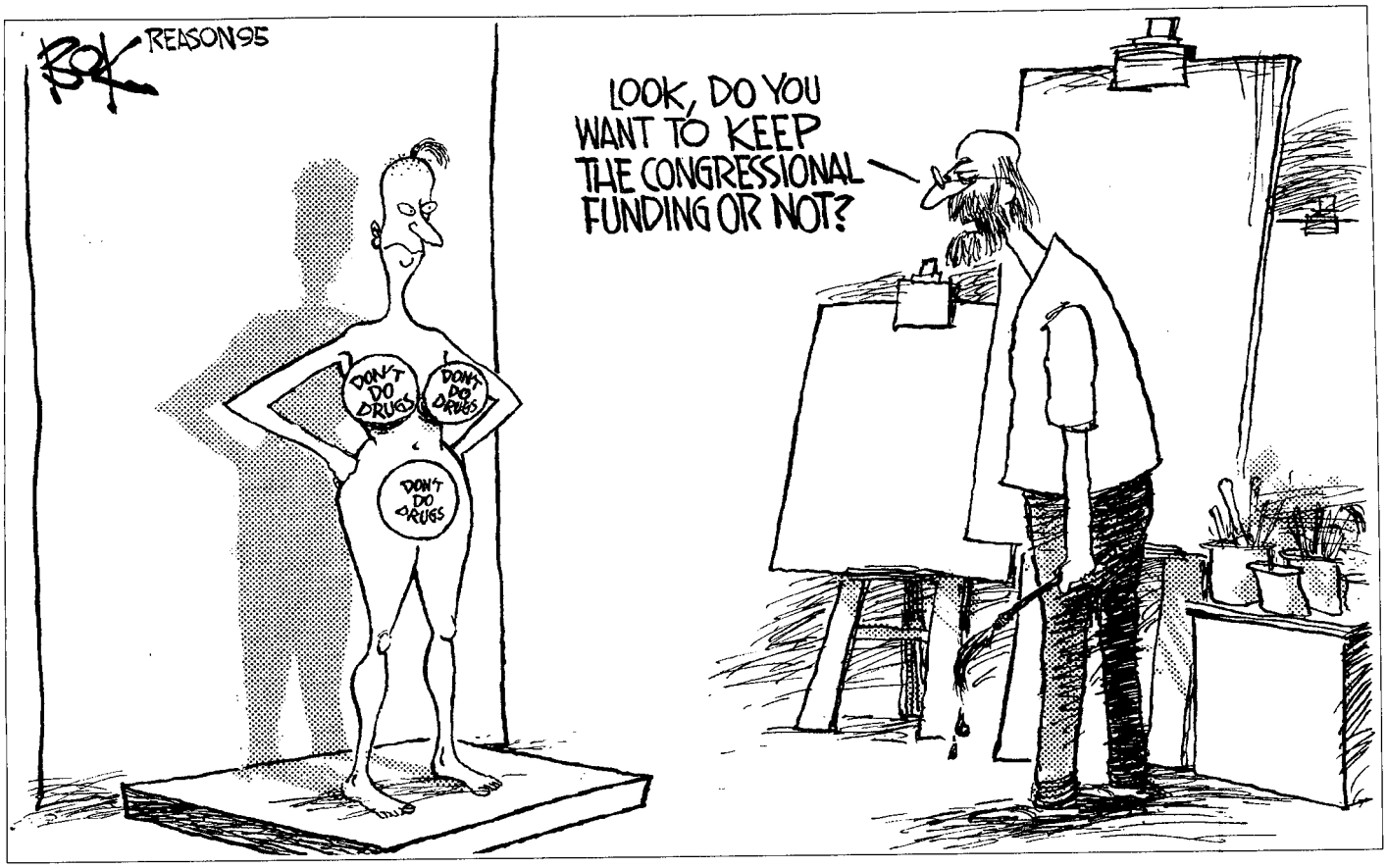
Bad Swap. Rep. Bill Archer (R-Tex.), chairman of the House Ways and Means Committee, vows to abolish the Internal Revenue Service and replace the income tax with some type of consumption tax. Unfortunately, Archer will never get enough votes for his first wish, a flat-rate national sales tax. Instead, look for a multi-rate value-added tax that will use high rates to pummel all sorts of politically incorrect items, including guns, ammunition, tobacco, and alcohol. Better to retain the 16th Amendment than lose the Second.



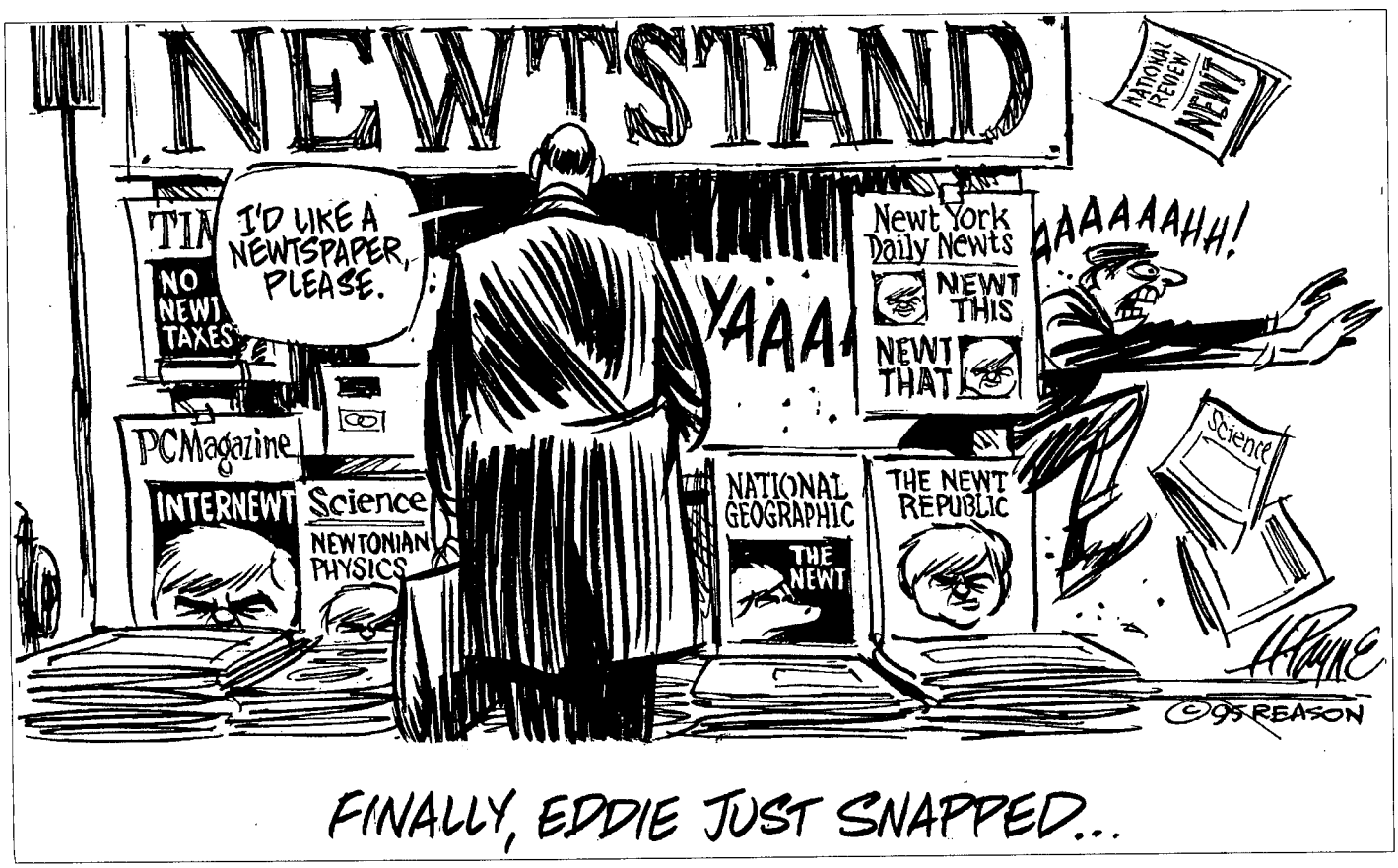
Block Party? Religious conservatives threaten to hamstring welfare reform. Led by the Christian Coalition, social conservatives line up to veto any changes in welfare law, including block grants and other "devolutions," that don't penalize illegitimate births. Time for conservatives to choose: Dismantle the federal welfare state or continue to micromanage it from Washington.

Borrowed Time. Accumulated federal debt gets scary. Barring major spending cuts, the national debt will reach *$6 trillion* by fiscal year 2000. Interest on the debt will exceed $260 billion next year, more than the entire 1973 federal budget.

Foreign Powers. Self-styled free-market Republicans and Democrats back big-time quotas on immigration, which would impose huge enforcement burdens on employers in border states. Rep. Bob Stump (R-Ariz.) and Sonny Callahan (R-Ala.) reintroduce the Immigration Moratorium Act, which would cut the number of legal immigrants in half, to "the traditional U.S. average of about 297,000 a year." Among those traditional opponents of regulation who would regulate new arrivals are Reps. Bill Zeliff (R-N.H.), Joe Barton (R-Tex.), and James Hansen (R-Utah).

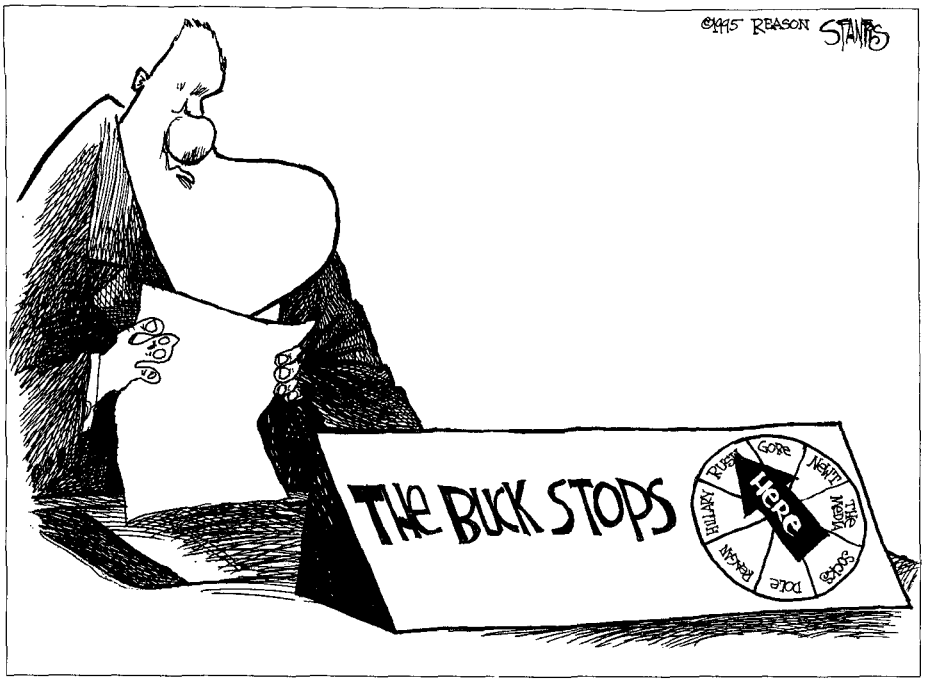


CHIP BOK



FINALLY, EDDIE JUST SNAPPED...

HENRY PAYNE



SCOTT STANTIS

In Oxford, Mississippi, Lisa Herdahl is trying to get the school to stop daily prayers over the public address system. Herdahl, who is Lutheran, objected to having her son indoctrinated in religion at school. The school forced him to wear headphones so that he could not hear the offending prayers. But that, in turn, led other students to ostracize and make fun of the boy. So now Herdahl has gone to court. Said school superintendent Jerry Horton, "We plan to vigorously defend our practices—we feel it's constitutional and doing good for students." Yeah, they seem to have gotten that "love thy neighbor" stuff down pat.

Thirty-five patients got themselves ad- mitted to veterans hospitals 2,268 times in a five-year period, costing taxpayers $6.5 million. The 35 patients, mostly alcoholics and mental patients, spent a total of 21,000 days in the hospital and also made 7,832 outpatient visits.

Meanwhile, citizen activists in Bexley, Ohio, are fighting to save a local adult video store. It isn't that the residents are all hot and bothered for porno tapes. No, they simply prefer the sex store to the establishment that will replace it: a McDonald's.

A guard at Lakeside, California's El Capitan High School spotted a gun in a student's car. The school wants to expel the boy, but his parents claim that he suffers from Attention Deficit Disorder (which is why he forgot the gun was in his car) and that removing him would be a violation of federal laws banning discrimination against the handicapped. So far, the courts have sided with the parents.

In Williamsport, Pennsylvania, police arrested 23-year-old Eric Christiansen for riding a skateboard while under the influence of alcohol.

Computer buff Bob Poulton thought he had found a bargain when he bought 20 computer disks for 20 cents each at a discount store in Langley, British Columbia. But he got quite a bit more than that. The disks contained the detailed, confidential medical records of thousands of Vancouver-area residents.

Having trouble meeting that special someone? Well, you might want to go to Greenburgh, New York. Seeing that the private sector can't possibly handle the complex and difficult task of introducing singles, the city fathers have set up a government-run dating service.

Whenever it seems that the left has a monopoly on political correctness, someone in the city of Cincinnati comes along to prove that the right can be equally goofy. Veterans groups in that city are protesting a local Mexican restaurant. The reason: Owner Stephen King decided to display a Mexican flag at the establishment. "There are too many missing POWs and soldiers who fought for the American flag," said one protester. Another deemed the restaurant owner "un-American."

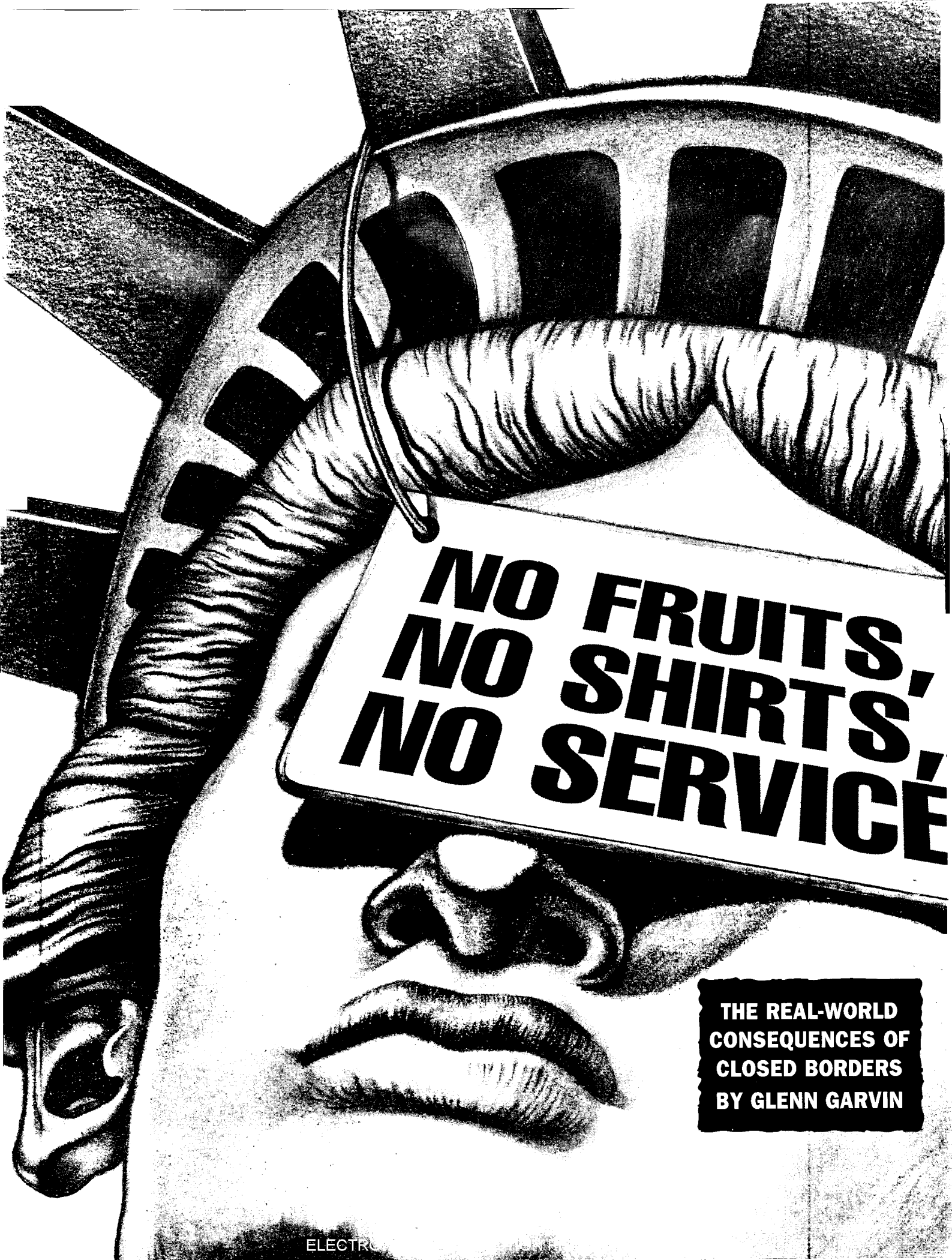
In Auckland, New Zealand, a woman was trapped for three days in a parking garage elevator. At first, attendants didn't believe her story and tried to charge her for three days worth of parking fees.

Christopher Lingle, then an American teaching in Singapore, wrote an article blasting unnamed Asian governments for using a compliant judiciary to bankrupt opposition politicians through lawsuits. The government of Singapore said that he was obviously referring to that country and sued him for "analyzing the judiciary." The judiciary demonstrated that it is not a tool of oppression by finding Lingle and his publishers guilty of political commentary.

Jesse Plumb told his wife that he was going on a one-day hunting trip. When he didn't return, Tammy Plumb called the police. After a four-day search involving helicopters, dogs, and more than 40 officers, Plumb finally showed up. He hadn't been hunting. He'd been having a tryst with another woman. He may be billed $13,000 for the search.

School officials in Billings, Montana, have found that they can save $27,000 a year by buying milk from a Wyoming contractor. Of course, this doesn't sit well with Montana dairy farmers who complain that this is a way to avoid Montana's higher state-controlled milk prices. Apparently milking cows is just practice for milking taxpayers.

—Charles Oliver



THE REAL-WORLD CONSEQUENCES OF CLOSED BORDERS

BY GLENN GARVIN

ELECTR

The last pickup truck pulled away from the parking lot, and the men settled back onto the folding chairs of the little cottage in central San Jose where they wait for offers of day labor. The morning rush was over; nothing to do now but wait until after lunch, when a few more contractors and landscapers might stop by looking for a couple of strong backs for the afternoon.

It was a crisp autumn morning, just three weeks before Californians were to vote on Proposition 187, a measure that some hoped—and others feared—might call a halt to the nightly march of undocumented immigrants across the border from Mexico. Even so, the dozen or so men in the cottage—*mojados*, wets, illegals, every single one—were surprised that a visitor wanted to talk about 187.

"It doesn't have much to do with us," said Jose Guadalupe, who at 64 years old has crossed the border more times than he can count over the past four decades. "The immigrants have always been here, and they always will be, come what may. We'll come by water, or land, or whatever." The other men nodded in agreement.

But suppose, the visitor said, suppose the Americans built a fence all along the border that was 50 feet tall.

"Not high enough," interjected Guadalupe.

OK, OK, 100 feet high, or 200 feet, or a thousand—however tall it would have to be to really plug that border. What would happen then? The men contemplated this idea in bemused silence. "Well," Guadalupe finally replied in a grave voice, "probably then the Americans would have to put black people back into slavery. Because we're the ones who work in all the fields here, picking lettuce and tomatoes and avocados. Americans don't do it. Unless you guys get people from Japan and Russia, who else is going to do it?"

Cottage in San Jose where immigrants wait for offers of day labor

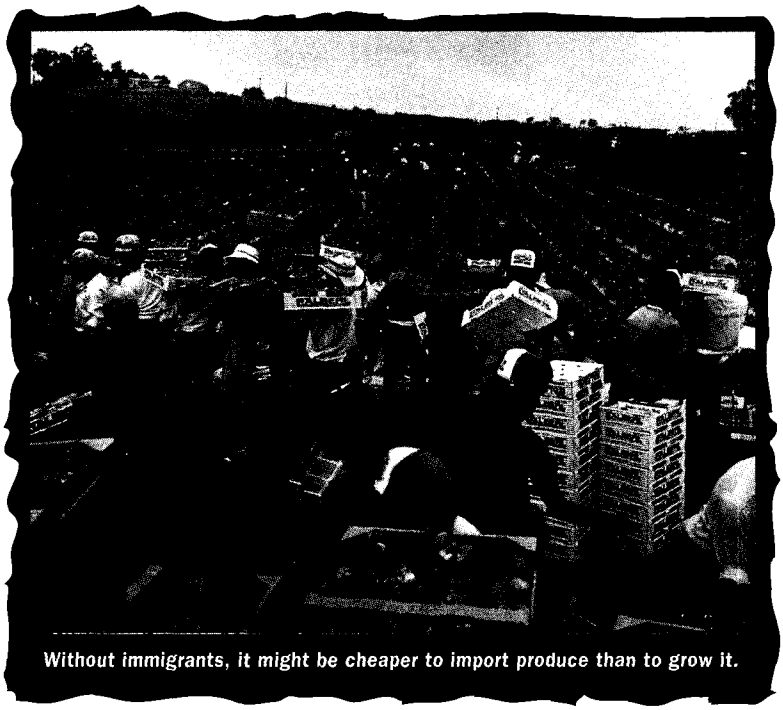
SUE MULLIN

So far, no American politician has been willing to say that if stopping illegal immigration requires repealing the 13th Amendment, then by God that's what we need to do. But just about anything else goes. National ID cards, computerized federal databases, doctors arresting their patients on the operating table, requiring teachers to rat on their students and encouraging the students to rat on their parents, pitching newborn babies back across the border: The Cold War had nothing on this new battle against immigration.

In fact, Bill Clinton last August officially declared that pulling up the national gangplanks now takes precedence over the final skirmishes of the Cold War. He

asked Fidel Castro (in return for what under-the-table promises, we still don't know) to put Cuba's secret police to work stopping Cuban refugees from coming to the United States on rafts. It is as if West Germany, as the Berlin Wall was collapsing, had offered a bounty to East German border guards for every fleeing refugee they could gun down.

Although Proposition 187 and Clinton's creation of prison camps for Haitian and Cuban refugees have put the battle against illegal immigrants in the spotlight, legal immigrants are scarcely more popular. Sen. Alan Simpson of Wyoming, the newly triumphant Republican Party's most influential voice on immigration, has promised to introduce a bill slashing the number of legal immigrants 25 percent. And that makes him an immigration *dove*. Last year a House bill that would cut the number of legal immigrants by 65 percent immediately and 85 percent in the long run attracted 73 co-sponsors from both parties, the single most popular immigration measure introduced during the past Congress. Said Pat Buchanan, the bill's principal champion: "If Republican leaders are frightened by political correctness from doing this, then it is a sign of what is endemic in the Republican Party; it won't touch an issue that somebody may say is evil and hard-hearted."



Without immigrants, it might be cheaper to import produce than to grow it.

The most peculiar thing about Buchanan's comment is the implication that it's "politically correct" to support immigration. Quite the contrary: The fashion across the political spectrum, from the tree-huggers at the Sierra Club to Rush Limbaugh's pugnacious "ditto-heads," is to hammer away at immigrants. They steal our jobs. They use up our national resources. They dilute our culture. The timid few who demur are almost universally scorned as ivory-tower knuckleheads who mistake poetry for policy. They aren't out there in the *real world.* They don't "focus on the immigration influx in practice, as opposed to libertarian theory," as *National Review* acidly puts it.

But if there's anyone who's neglecting the real world, it's the people who want to cut immigration. Because they don't answer Jose Guadalupe's question. Once we've gotten rid of the immigrants, who *is* going to pick the lettuce and tomatoes?

A little agricultural math exercise: Of the million or so people who make up the full-time farm work force in the United States—those who work 100 days or more a year—the U.S. Department of Labor estimates that 60 percent are foreign-born. (Some labor specialists say as many as half a million may be illegal aliens, the scourge of the scourge to anti-immigrationists.)

Their average wage is around $6.00 an hour. How much would it cost to find native-born Americans to replace them in the fields? Let's say $12 an hour, which most agriculture experts think is a very conservative estimate. That means wages will jump 100 percent.

Multiply the doubling of wages times 20 percent, since economists say labor costs represent about one-fifth of food prices. Assuming that demand holds constant, what it all adds up to is a 40 percent increase in the cost of farm produce. If America's 68 million households spend an average of $10 a week on fruits and vegetables, that's $272 million a week (or, if you prefer, $14.1 billion a year) as the price we pay for running immigrants out of just one small sector of the U.S. economy.

Not that it would work.

"It's not just money that keeps Americans out of those fields," argues Libby Whitley, an agricultural labor consultant who until recently was a labor specialist with the American Farm Bureau Federation. "I don't know what journalists make. But let's say it's $100,000 a year. OK, I'll give you a nice raise. I'll pay you $110,000 a year to be a migrant farm worker.

"But you'll leave your friends and family. You'll live in a house trailer in an orchard, do your cooking in a group kitchen. And the job will only last for three months. Will you do it?...

"It's not just the pay, it's the nature of the work. It's outdoors, it's often in unpleasant weather, it's physical, it's hard. It hurts your back. It's short term. And you can't even guarantee tenure of work. If there's a bad freeze or a hailstorm just as a crop is ready to be picked, you're not guaranteed anything. You go home empty-handed. That's the nature of nature. And that's the nature of farm work."

Throughout most of American history, there's only been one group willing to consistently take on that kind of labor: Recent immigrants. People with little education, few skills, and only a smattering of English, but who bring broad backs and the conviction that they're building a better life for their families. (There was, of course, one group of people who kept working in fields for generations after they arrived in America. The people Jose Guadalupe made reference to: slaves.)

Whitley has seen them on farms all over the country: the Mexicans toiling in the avocado and watermelon fields in California, the Jamaicans cutting cane and picking apples in the South, Haitians roaming Florida's citrus orchards, the Hmong tribesmen from Laos working in Minnesota dairy farms. "I even

ULLI STELTZER, *THE NEW AMERICANS*, NEWSAGE PRESS

visited one county in upstate New York—I'm not going to tell you which one, because they don't need any trouble with INS—where the work force was predominantly illegal Polish immigrants," she says. "They didn't have much education and they didn't speak much English. So they did what immigrants have always done—they went and picked cabbage."

The crops and the skin tones of the people picking them may change from region to region, but Whitley says one thing is always constant: The immigrants are hard workers.

"You will not find many of the farmers *I* know bashing the foreign worker population," she says. "They will tell you quite honestly that they're excellent workers and decent people. Most farmers will tell you immigrants have a strong commitment to the work ethic. In fact, I'm always trying to hush farmers because they talk about how much better the immigrants are than U.S. workers. I'm always afraid they're going to get charged with some kind of discrimination."

Oh, one other thing: Getting rid of immigrant farm workers, no matter how much it cost American consumers, might not save any jobs for U.S. workers anyway.

"The more expensive labor gets, the more practical it becomes to mechanize," says Dalton Yancey of the Florida Sugar Cane League. His own industry is in the process of shedding the last of 10,000 foreign cane-cutters, in part because the bureaucratic hassles of getting them into the country were becoming too much of a headache. Their work will be turned over to machines. That's the way much of U.S. agriculture is headed.

"Corn and all the feed grains, they can be done mechanically," Yancey notes. "Potatoes, carrots, radishes, red beets, too. Cotton. Pecans can be shaken out of trees, and so can almonds."

Of course, there are some things—mostly fruits, which have to maintain a pretty appearance for the consumer—that can be harvested only by hand. But Yancey doubts that those crops will ever be picked by Americans, either.

"I suppose there's some level of pay at which Americans would be willing to do that work," he says. "The problem is you could fly fruit in from Chile cheaper. I suspect that we'd just do away with those crops in the United States if we somehow lost access to immigrant labor."

To put it another way, immigrant farm workers don't *take* jobs from anyone. Many of them do work that, if they didn't exist, simply wouldn't be done, at least not in the United States. And agriculture is not the only sector of the economy where it happens.

Some of the work is, arguably, trivial. In Miami, for instance, a lot of recent immigrants set up shop at gas stations, washing cars for $10 apiece and splitting the take with the station owner. Nothing high-tech about it—just a guy with a bucket, a sponge, and a willingness to stand around in wet clothes all day wiping down other people's cars. And if he wasn't there, offering his labor so cheaply, most of his customers would simply wash their own cars in their driveways at home.

"Whenever people voluntarily hire someone to do something, the benefit they receive is called consumer surplus," says Timothy Taylor, managing editor of the American Economic Association's *Journal of Economic Perspectives*, who is fascinated by the economic reverberations of immigration. "This is one of the reasons so many people in California have gardeners, because immigrants are there to offer the service inexpensively. If the immigrants didn't exist, maybe you wouldn't have had your yard done or your car washed, because it just wouldn't be worth it."

Western civilization could undoubtedly withstand the dirty autos and unkempt lawns that would result if all the immigrant car washers and yard men were eliminated. But there are some consumer-surplus-generated jobs that have more impact on American lives.

"I've had four nannies for my kids, and every single one has been an illegal alien," says Amy, a Washington architect. "The first one was British. The second was from Sierra Leone. There was one from Peru, and the one we have now is a Salvadoran. Every time, I've put an ad in the paper, but I've never interviewed a single American for the job. I'm not sure I've even gotten a *response* from an American."

Amy pays $6.00 an hour to her nanny, well over minimum wage. "But I'm not terribly surprised that Americans aren't interested in the job," she says. "Taking care of children is hard work. There's no harder work in the world. It's physically difficult and emotionally tough. Children are demanding. You have to keep them clean. Changing diapers is not too much fun. And children can be real bratty. I know my 3-and-a-half-year-old daughter can be a terrible brat. And that's very difficult when you have no blood relationship with them. Also, you've got to keep an eye on them at all times, and if there's more than one, you have to be in more than one place at all times."

As hard as the work is, Amy says that paying significantly more than $6.00 an hour wouldn't make economic sense to her. "I'd probably just quit and stay home, taking care of them myself," she says.

Immigrant farm workers don't *take* jobs from anyone. Many of them do work that, if they didn't exist, simply wouldn't be done, at least not in the United States. And agriculture is not the only sector of the economy where it happens.

Across the country in San Francisco, her words are echoed by journalist Sharon Noguchi, who recently went back to work after having a baby. She went to a resource center where babysitters register and took down 50 names. All but one turned out to be immigrants. She eventually hired a Salvadoran.

"It's the same for all my friends," Noguchi says. "I'm not sure

that wages are the whole story, either. I'm paying $7.00 an hour plus taxes and Social Security, and some of my friends are even paying for health insurance. But Americans just don't apply for the jobs. I think it also has to do with the nature of the work. The hours are odd and somewhat irregular, and there's no future in it—you work a couple of years and then get laid off when the children are older. That's just not desirable work."

Like Amy, Noguchi says that if there were no immigrants working in child care, she would probably have to quit her job and stay home with her baby. "So would a lot of other mothers like me," she declares. "There are a lot of women like me, women who work not because they have to, but because they like to. We're the people who will be the losers."

So will a lot of Americans who work in the garment industry. Perhaps no other U.S. industry is more intimately linked to immigrants than the rag trade. The ready-to-wear industry was founded in New York in the 1880s, when Jewish immigrants from Russia and Eastern Europe provided most of the labor. As they moved out of production and into management and ownership, they were succeeded by a wave of new Italian immigrants. As European immigration dried up in the 1930s, Puerto Ricans and southern blacks took over the production floors. In the 1960s, Chinese and other Asians poured into the garment factories. These days the jobs are done by new Chinese arrivals along with recent immigrants from Latin America and the Caribbean.

"The second generation never stays," says Muzaffar Chisti, the director of the Immigration Project of the International Ladies' Garment Workers' Union. (Though Indian-born, he's a U.S. citizen.) "We have clearly seen a recurring phenomenon, the replacement of one set of workers by another. But it's a *re*placement, not a *dis*placement....One group of immigrants moves up and out, and another takes its place. That's the whole promise of America.

"That's the whole interesting thing about this immigration debate. Immigration is such a great bargain for this country. Immigrants come to work in what economists call the secondary sectors of the market. The primary sector is the prized jobs, the ones with good wages and upward mobility. The secondary sector is the jobs with low wages, harsh discipline, low mobility. Those are the ones the immigrants take. They do it with the clear promise that it's going to be a better deal for their kids. And it is. The kids of our Chinese immigrants go to Ivy League schools in prodigious numbers."

In some cases it doesn't take a full generation for immigrants to succeed in their new life. Many of the Chinese who arrived in the garment factories in the mid-1960s have already worked their way in the managerial and entrepreneurial classes. "There are 500 to 600 Chinese-owned garment companies in New York," notes Chisti. "In 1960, there were just five. They employ 30,000 workers." Their payroll is more than $200 million.

Anti-immigrant activists would retort, no doubt, that most of those 30,000 jobs go to other immigrants rather than Americans. That's undoubtedly true. But many jobs generated by the garment industry are held by native-born Americans. Packagers, truckers, mid-level managers, and wholesale workers are mostly natives. So are people in countless other jobs that were created by the garment industry, from the assembly-line workers in the plants where sewing machines are built to the pink-collar staffs of the designers who cluster near the garment factories. A 1985 Urban Institute study of the garment industry in Los Angeles, the country's second-biggest, concluded that without Mexican immigrants, the city would have lost 50,000 production jobs, 12,000 management jobs, and 25,000 incidental jobs.

"Immigration not only works for the immigrants, it works for the competitiveness of our country," Chisti says with conviction. "Apparel is still New York's largest industry. New York is still the apparel capital of the world. And it couldn't have been without immigrant labor. The garment industry—collapse may be too strong a word—but the garment industry simply could not continue at anything like its present level. It would lose its principal source of workers. Much of it would move off-shore."

Chisti scoffs at the idea that Americans could take over those jobs, even if the pay could be raised without destroying the industry's competitiveness. "People have the idea garment work is unskilled," he notes. "But if anyone thinks sewing a shirt in less than 20 minutes without cutting off your fingers is unskilled, let him try it. This is a skill, and it's a skill these workers have learned abroad. We don't have programs here to teach people how to sew. Immigrants learn it in informal or family networks. How are you going to replace that?"

And yet the notion persists that immigrants come here and steal jobs, consigning hard-working Americans to the unemployment lines. It is a view that the immigrants find bewildering.

"Listen, señor, what American would want my job?" politely inquires Carlos, an illegal immigrant from Mexico's troubled Chiapas state. Using false documents, he has worked for the past five years in a furniture workshop in downtown Houston. All day long he totes heavy lumber from one side of the room to another for $5.00 an hour. "It's not terrible work, but it's very hard, for very little money," Carlos says. "Americans wouldn't want such a hard job." He's not complaining—in Chiapas there was no work at all—but simply stating the facts. All the other unskilled laborers in the workshop are Mexican immigrants, too.

"People stop by here to offer jobs," says Louise Zwick, who

Immigrants come to work in jobs with low wages, harsh discipline, low mobility. Those are the jobs the immigrants take. They do it with the clear promise that it's going to be a better deal for their kids. And it is.

with her husband Mark operates Houston's Casa Juan Diego, a temporary residence for new immigrants. "And you should see the kind of work it is: Heavy, distasteful labor. Pouring tar for roofers in the middle of the summer in 100-degree heat. Or, last fall, after we had terrible floods northwest of Houston, people came around looking for help cleaning that dirty water and stinking mud out of their homes. And the whole reason they came here is that they couldn't find Americans to do that work, but they knew immigrants would."

Immigrants in the garment industry supply skills learned abroad that natives mostly lack.

ULLI STELTZER, *THE NEW AMERICANS*, NEWSAGE PRESS

Luis Moreno learned about dirty jobs the hard way. He arrived in Miami in 1989 with CIA help after spending eight years as a commander in the contras, the American-backed rebels who fought Nicaragua's Marxist Sandinista regime. Moreno had a distinguished combat record—after a mortar accident blew off his right arm, he learned to fire a rifle with his left and continued to lead contra troops inside Nicaragua—but he found that setting ambushes and blowing up bridges were relatively undervalued skills in the U.S. economy. And although popular legend has it that the CIA set up ex-contras with luxury condos and country-club memberships, all Moreno got was a work permit and a brisk shake of his left hand.

"I was a man with no way out," he recalls. "I had one arm. I didn't speak English. But I couldn't go back to my country, because the communists were still in control. And I had two children to support. So I had to do whatever was necessary." He took a job as a guard at a security company.

"Lots of Nicaraguans were coming to Miami then—that was when it looked like the Sandinistas would stay forever—and I would say that 90 percent of the guards at my company were Nicaraguans like me," he remembers. "And the rest were from other countries in Central America. We were all immigrants. Why? Because we were people who didn't speak English. And people who don't speak English in America don't get treated very well."

The company sent him to various sites during the three years Moreno worked as a guard. But they were all pretty much the same: warehouses in seedy neighborhoods near the city's crime-riddled ghettos. "The places were all difficult assignments," he says. "There was never a toilet, never a place to get a drink of water. I was always outside, in the rain, in the mosquitoes." But that wasn't the worst of it. The worst was standing around unarmed in the dark at 2 a.m., waiting for a crackhead with a 9mm Glock to show up to break into the place.

"Really, we weren't much more than human burglar alarms, there to call for help on the walkie-talkie if something went wrong," Moreno says. "I remember one night when I was guarding a clothing warehouse. And I saw someone breaking in. So I called my supervisor, and he called the owner. If the owner called the police, and it turned out I was wrong, and there was no burglar, then he would have to pay some kind of a fee to the police department. So the owner said, 'Well, there's nothing too valuable inside there. Don't call the police. Just tell the guard to try to catch the guy when he comes out.' So I stayed there all night, with no gun, waiting for this guy—maybe he had a machine gun, for all I know—to come back out. I had plenty of combat experience, so I wasn't scared, exactly. But I thought about my children. What would happen to them if I were killed? Who would take care of them?

"I was getting paid $4.25 an hour for that. And you ask me why there were no Americans working at my company? What American would risk his life to save another man's shirts for $4.25 an hour? Only an immigrant would do that, because he can't do anything else. Once in a while an American came in to apply for a job. And they always got hired on the spot to be a supervisor, because they could speak English, and the supervisors had to speak English to deal with clients and police and insurance companies. The boss loved it when Americans came in, but that didn't happen very often."

Even so, Moreno never complained to his family about his job. Who would have listened? His wife came home squinting and sore from a garment factory where she sewed sleeves on shirts for five cents apiece. His arthritic 57-year-old father wheezed from the perpetual cold he got working at a warehouse, unloading 50-pound boxes of frozen chicken from trucks under Miami's tropical sun, then carting them inside to a meat freezer. One brother could barely drag himself into the house at the end of the day after lugging cement blocks around construction sites in the 90-degree, 90-percent humidity heat. And still another brother was rarely seen.

"Ahhh, he had the worst job of all," Moreno chuckles. "He worked for $100 a week guarding a pigpen on the edge of the Everglades. Have you ever been out there? He had to protect those pigs from all the crazy people who run around in the Everglades. Every night the mosquitoes fell onto him like a cloud. And the snakes. You don't want to know about the snakes....

"It was hard work, his job. My wife's job too. All of us did hard work. But people do it all around the world. That's the kind

of job people who don't have education get."

Moreno is getting an education. In between his guard shifts, he took junior-college English classes. His language skills improved to the point where he was able to get a job as a courier shuttling documents between downtown law firms. He has 90 hours of credit toward an accounting degree, and someday he hopes to open a bookkeeping service.

Meanwhile, he stops by the security company every once in a while to say hello. "All the Nicaraguans are gone," he observes. "They've gotten better jobs. All the guards now are Haitians."

When Luis Moreno and Carlos say they didn't take their jobs from Americans, they won't get any argument from the vast majority of economists. Study after study shows that immigrants are at worst a break-even proposition in terms of creating jobs and paying for the government services they consume.

Perhaps the most dramatic was a study by Princeton economist David Card, who looked at the impact of the 1980 Mariel boatlift on Miami employment. That was the year Castro, in an ill-considered fit of pique, briefly opened Cuba's doors to permit free emigration. In just a couple of months, 125,000 refugees flooded into Miami, boosting the city's work force 7 percent overnight.

Card tracked Miami's unemployment statistics for six years after the boatlift, comparing them with those of half a dozen Sunbelt cities with similar economies. What he found was—nothing. Miami's economy swallowed the newcomers without a trace, like a boa constrictor gulping down a pig.

"You couldn't find any effect of the boatlift on employment in any part of the economy," Card says. "Because most of the people who came during Mariel were unskilled workers with little education, even the most optimistic person might have expected some impact at the lower end of the economy. But when I checked on the statistics for unskilled black or non-Hispanics, you couldn't find anything at all." Some workers were undoubtedly displaced, of course, but they apparently were able to find other jobs very quickly.

Although Card admits to some wonder at the speed and totality with which the Mariel refugees were absorbed, he wasn't surprised by the general principle that economies expand to accommodate newcomers.

"When I read letters to the editor, it's plain that most people seem to think that the number of jobs is fixed," he says. "So, in their view, if you add one more worker to the population of a city, it just means that that guy will have to fight with somebody else for an existing job. It's an extremely narrow and very non-economic view of the world....If you look across cities, the number of jobs is proportional to the number of people in the city. The fact that more people have moved to New York than to Atlanta does not mean that a lot of people have been thrown out of work in New York. What it means is that there are 10 times more jobs in New York than there are in Atlanta."

What happens is that every new person who comes to New York—or to the United States—looking for work is also a consumer. He wants a job, but he also has to buy shoes, eat breakfast, and rent an apartment. The more consumer demand for goods and services, the more jobs are created to fill it. As British writer John Toland noted during an influx of foreign Jews in 1714: "We deny not that there will be more tailors and shoemakers; but there will also be more suits and shoes made than before." Were Toland around today, he might point out that Florida's unemployment rate is lower than the national average, even though it has the third-largest immigrant population of all the states.

Who is going to pick the lettuce and tomatoes? has a companion question. It is, *Who is going to design the computers?*

"The United States would not be remotely dominant in high-technology industries without immigrants," flatly declares writer George Gilder, who chronicles international competition along the information superhighway. "We are now utterly dominant in all key information technology domains. And at every important high-tech company in America, the crucial players, half of them or more, are immigrants.

"I've spent 15 years now going from one of these companies to another. And always, when you get past the sales people and the public-relations people, in the back you meet the guy who actually invented the product. And he's always from India or Vietnam or someplace like that.

"You exclude immigrants from our high-tech industries and what you get is Europe, where they have no important computer or semiconductor company now after 20 years of focusing on information technologies. There's been a steady stream of heavily funded European economic community industrial policies focused on semiconductors and computers, and Europe has ended this period without a single important computer or semiconductor company....In fact, many of the key contributors to the U.S. industry came here from Europe: Eastern Europe, Italy, Belgium, Britain, France. Where would we be if we hadn't welcomed them?"

Does Gilder exaggerate? Consider the history of a single company: Intel, the $10-billion Silicon Valley company that is the

Immigrants, like this car washer in California, do work few natives would want.

ULLI STELTZER, *THE NEW AMERICANS*, NEWSAGE PRESS

world's largest producer of semiconductors. It offers a striking example of the creative forces unleashed by bringing together talented, ambitious people from all over the world (including the United States) and allowing them to share ideas in an open, entrepreneurial economy.

1968: The company is founded by two Americans who are quickly joined by Andrew Grove, a 31-year-old Hungarian engineer who fled his country 12 years earlier as Soviet tanks poured in. Grove, who left Hungary with $20 in his pocket, will eventually rise to be Intel's CEO.

1969: Intel scores its first big success with the MOS chip, which becomes the semiconductor industry's favorite technology. The team that develops the chip is spearheaded by Les Vadasz, a Hungarian who will eventually become an Intel vice president.

1970: Intel introduces the DRAM chip, which will soon be one of the fundamental building blocks of virtually all computers. Les Vadasz plays a key role on the development team.

1971: Dov Frohman, an Intel engineer from Israel, invents the EPROM chip, which retains its memory even when the power is turned off. It quickly becomes indispensable in everything from telecommunications equipment to automobiles.

1974: Intel unveils the 8080, the first general-purpose microprocessor. Of the three top people on the development team, one (Federico Faggin) is Italian and one (Masatoshi Shima) is Japanese.

1979: The company produces the 8086 chip, which, with slight modification, will become the brains of the first IBM personal computer. The team that engineers the chip is headed by Jean-Claude Cornet, a French immigrant.

1993: Intel introduces the state-of-the-art Pentium chip. The Pentium project is managed by Vinod Dham of India. And one of the chip's two principal architects is another Indian, Avtar Saini.

So where would Intel be without immigrants? The company's communications director, Howard High, just shakes his head at the question; he can't imagine. But he does know one thing: Intel will continue to profit from imported brainpower. If U.S. law prohibits it from arriving on boats or planes, it will slip in through telephone modems.

"This talk about changing immigration law is not going to impact where the jobs go in high-tech industries," he says. "You can live where you want to live, or have to live, and if you're good, we're going to hire you. There aren't a lot of people who specialize in the kinds of skills we need. So if you live in Tel Aviv, or Manila, or Beijing, or Albuquerque, we're going to hire you and move the necessary facilities to you....

"For $4,000, we can put 150 million instructions per second on the desktop of anybody in the world. If people don't want to live here, or can't live here, they don't have to. With computers and telephones, the border issue just kind of goes away."

Not everyone is quite so sanguine about the possible effect of immigration restrictions on America's high-tech industries. "It's true that a lot of computer programming can be done anywhere in the world," says Nathan Rosenberg, a Stanford economist who studies the history of technology. "They do that now. A number of American firms, Motorola and some others, have large networks of computer programmers in India and elsewhere.

"But if we're talking about more highly engineered and creative work—design work, sophisticated research, the bright big ideas—it's a more synergistic situation involving face-to-face interaction among people. The point is that people need to talk to one another, react directly to one another, and communicate in ways that don't seem to work nearly as productively when you're communicating through a wire or a fiber-optic line. The key word is *synergy*, a creative response to other people's ideas or statements, an energy that results when people are in the same room looking at one another." That synergy enriches not only U.S. companies but, by sparking innovations, the entire world.

You exclude immigrants from our high-tech industries and what you get is Europe, where they have no important computer or semiconductor company now after 20 years of focusing on information technologies.

Rosenberg is frankly worried about what will happen if Congress passes draconian anti-immigration laws.

"About 60 percent of all students earning advanced degrees in American universities in engineering today are foreign," he observes. "We have benefited—and we continue to benefit immensely—from this flow of foreign talent. For example, Indian immigrants have played a remarkable role in exploiting higher mathematics for purposes of industrial innovation.

"A very large fraction of the foreigners who come to America to study and take advanced degrees in engineering and science stay here. When you combine that with the fact that, for whatever reason, American students are simply not going into many areas of engineering that are relevant to industrial innovation, it's obvious we need these foreigners. We need them very badly....

"It seems to me that the American high-tech industry will suffer, will suffer tremendously, if these anti-immigration measures go into effect."

The prominence of immigrants at Intel is no fluke. Some 15,000 Asian immigrants are employed in Silicon Valley, roughly a quarter of the work force. And the phenomenon is not limited to California. At IBM's facility in Yorktown Heights, New York, a quarter of the researchers are Asians. At AT&T's Bell Labs in New Jersey, 40 percent of the researchers in the Communications Sciences Research Wing were born outside the United States.

In Hawthorne, New York, 60 percent of International Paper

Company's engineering department is composed of immigrants. Du Pont Merck Pharmaceutical in Wilmington, Delaware, regularly brings out new products developed by immigrants. One example: the anti-hypertensive drug Losartan, created by a team of scientists that included two Chinese and a Lithuanian. At Phoenix Laser Systems in San Jose, California, founder Alfred Sklar, a Cuban refugee, is pioneering laser technologies that could eventually cure several forms of blindness.

High-tech is not the only expertise that immigrants bring with them. They also bring along knowledge of the way businesses organize and market themselves in other parts of the world, which can be an invaluable source of innovation.

There are few hotter companies in America than Kingston Technology, which designs and manufactures memory upgrades for virtually every kind of computer. Located in Fountain Valley, just south of Los Angeles, Kingston regularly hosts awestruck reporters from the nation's financial press. *Fortune* labeled it "the paradigmatic growth machine," and it was at the top of *Inc.* magazine's 1992 list of the country's fastest-growing privately held companies. No wonder: From its founding in 1987 through 1992, Kingston's sales increased a sizzling 368 percent. Last year they hit $800 million.

And who is behind this classic American success story? Well...two Taiwanese immigrants, David Sun and John Tu. And a stroll through the company's semi-chaotic two-story headquarters ("management by shout and grab," Kingston people call it) is like a visit to a real-life version of Disneyland's "It's A Small World" ride. American salesmen consult with Chinese engineers who chatter at Vietnamese testers who banter with Hispanic assemblers. Kingston's 1,300 employees are divided roughly equally among the four groups.

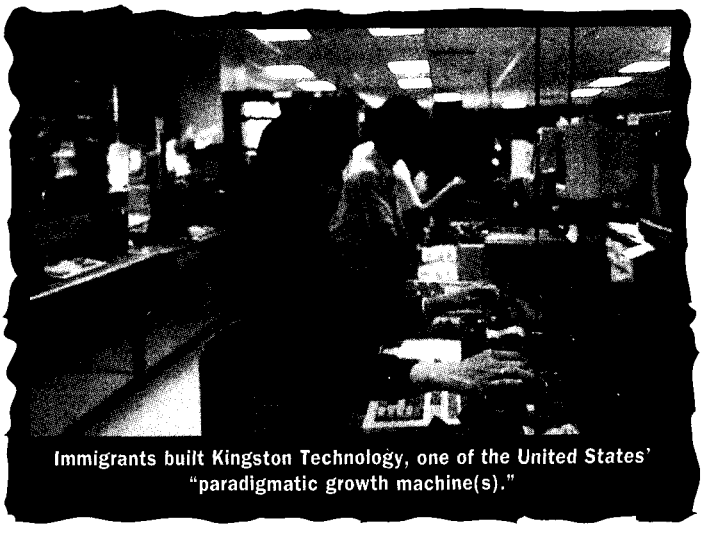
"Southern California is at the forefront of today's immigration," says marketing director Ron Seide. "The same thing that made the United States strong at the turn of the century—the flow of immigrants that built the east and the industrial midwest—are part and parcel of Southern California's success. Without immigrant influence, their ideas, their intellectual capital, the high-tech industry—which is the best thing California has going for it—wouldn't exist."

Seide (who hails from Cleveland and is sometimes referred to as "the Anglo interface" by his polyglot colleagues) recalls that he was stunned by the sheer energy radiating from Kingston's work floor on his first day in the job. He has no doubt that it is generated by the immigrants.

"You've got to have a lot of gumption, get-up-and-go, guts, whatever you want to call it, to pack up your belongings, jump into steerage, and start a new life 5,000 miles away in a country where you don't speak the language," he observes. "It's a self-selecting process. And then they bring it into the workplace. It's infectious."

Kingston works at the center of a tightly knit cluster of independent companies, sharing capital, know-how, and markets. Kingston designs memory boards, which are manufactured by a partner in Taiwan, assembled by another partner down the road in Orange County, and sold by distributors all over the world.

"We operate as a virtual corporation," Seide says. "That's very central to the way Asian companies are structured. And no American could have imagined it. This company is literally an immigrant's dream."



Immigrants built Kingston Technology, one of the United States' "paradigmatic growth machine(s)."

So: Who is going to pick the lettuce and tomatoes? Who is going to design the computers? And, of course, the questions don't stop there. Without Ethiopians, who will be the parking attendants in San Jose? Without Haitians, who will drive Miami's taxis? Without Filipino nurses and Pakistani doctors, who will care for the ill in inner-city and rural hospitals? Without Mexicans, who will build houses in North Carolina? Yes, North Carolina.

"If it were not for the Latin American population here, we'd be in a terrible fix," says the vice president of a large Raleigh construction company. "Unemployment is down under 3 percent here and has been for several years. And when we advertise for workers, we don't get Americans, we get Mexicans. I don't know where they come from. But I do know they believe in a day's work for a day's pay, and we like that."

In a sad indication of today's political climate, the construction man doesn't want his name used: "I don't care to get caught up in any political backlash over anything. There are some things that are politically sensitive, and one of them is immigration. I saw what happened in California with that proposition." In the United States these days, it is potentially controversial to say that you like your workers, if they happen to have been born in the wrong place.

And in the United States soon, it may become more expensive to buy a shirt or build a home, more difficult to hire a babysitter, next to impossible to operate a vegetable farm. Office rents will rise along with janitors' wages; so will the cost of a dinner out, as bus boys, waitresses, and cooks get more expensive. Maids and gardeners may become a thing of the past, along with career women. High-tech research and development will stagnate. Who could have guessed that "pragmatism" would be so extravagant? ◆

Contributing Editor Glenn Garvin's latest book, Diary of a Survivor: Nineteen Years in a Cuban Women's Prison, *co-authored with Ana Rodriguez, will be published this spring by St. Martin's Press.*

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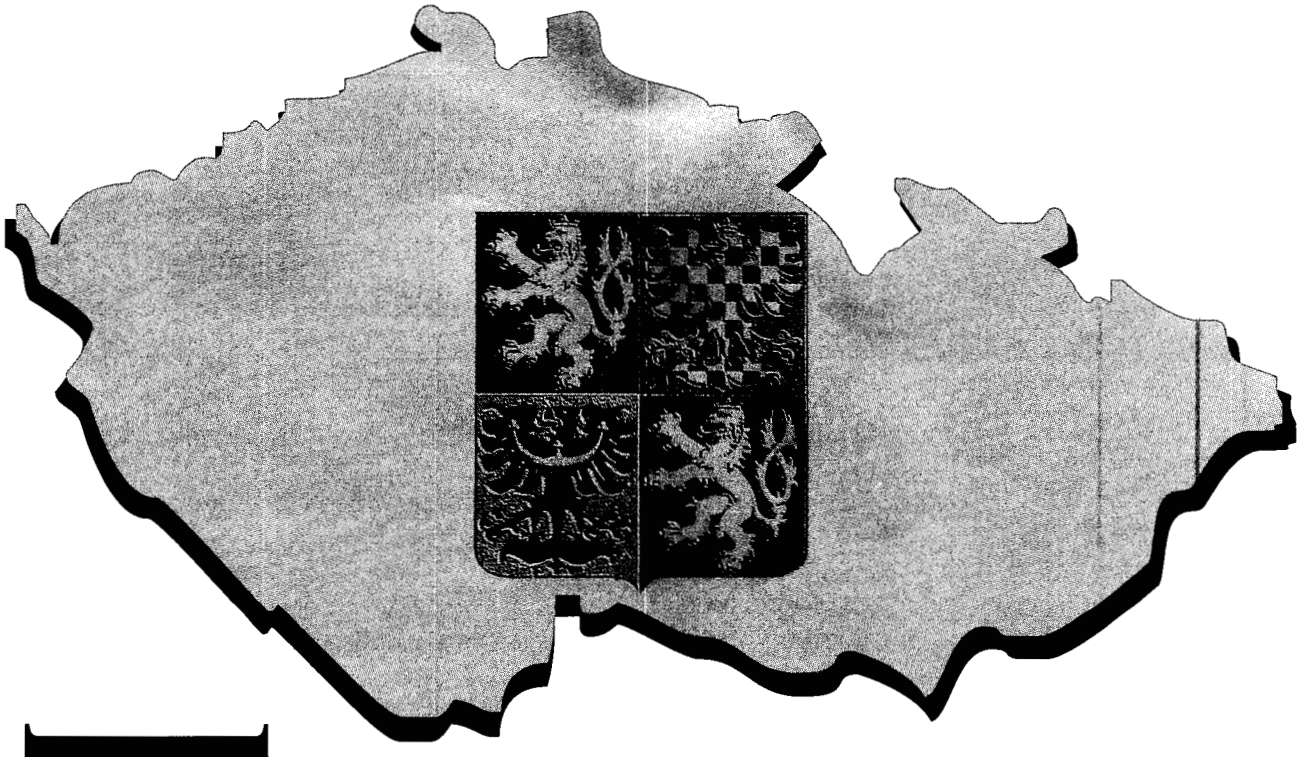
THE CZECH MIRACLE

WHY PRIVATIZATION WENT RIGHT IN THE CZECH REPUBLIC

BY THOMAS W. HAZLETT



There are, at bottom, just two ways to bring economic rationality to a state which has seen none of it. One is to carefully analyze the situation, to call high-level conferences and consult with international experts, to measure each tentative step, to be cautious of doing the wrong thing—of going too far, of giving away too much. The other path is to decide that speed is the very essence of reform and that the great catastrophe lies not in doing the wrong thing but in doing nothing.

Most of Eastern Europe has chosen the cautious route. Alone among the former satellites of the Soviet Union, the Czech Republic has elected to go fast. Now as Hungary, Poland, and Russia struggle to emerge from the abyss of the planned economy, as Romania and Bulgaria and Ukraine bobble in a post-socialist/pre-capitalist never-never land, a thriving marketplace is flashing its sparkle in the Czech Republic, a modern experiment in radical capitalist transformation.

The Czech model was not how the Western experts had charted the East European reform era. Some did support macroeconomic "shock therapy," which has had notable successes in freeing prices and privatizing small enterprises, but the idea of turning state socialism into private enterprise in an instant—that they considered impossible. If the United Kingdom, with its commercial law, its investment bankers, its management consultants, its brokerage houses, and its stock exchanges took all of the 1980s to privatize 50 or 60 state-owned firms during the regime of the Iron Lady, then surely the task of privatizing the Czech Republic's *2,700* state-owned firms could not be done overnight.

In 1990, Czechoslovakia was the most socialized of any economy in the Warsaw Pact: 97 percent of productive assets were owned by the government. Hungary and Poland, at about 80 percent state owned, were teeming meccas of laissez faire by comparison. By March 1995, however, the assets of the Czech Republic, the two-thirds of Czechoslovakia which split from the Slovak Republic on January 1, 1993, were 80 percent owned by private persons or corporations—easily the highest ratio of any ex-communist European country. Poland, the test ground for early reforms including "shock therapy," is still unhappily stuck at 55 percent private, the same level as Hungary, a country with a 25-year head start on reform.

And the Czechs are not just privatizing like mad, they are "growing the economy." Czech living standards are increasing rapidly. Inflation—which had its pop when pent-up Crowns were unleashed in the early 1990s—is now under 8 percent a year; indeed, the currency has held its ground against the U.S. dollar since 1991. Exports are booming and the federal budget is in surplus. Unemployment is at 3.5 percent, a remarkable feat considering that layoffs from newly privatized firms are virtually ubiquitous. The expanding service sector is swallowing up thousands of "workers" from the "industrial" sector (such employees did not in fact engage in much productive *work*, nor did their factories demonstrate more than a semantic allegiance to *industry*). As Prime Minister Václav Klaus announced last summer, "We are the first Eastern bloc nation to emerge from major surgery and make it into the post-op recovery room."

Most phenomenal, however, is the electoral payoff of what the government still resists calling the "Czech Miracle." While reformers all across the formerly communist nation-states are in hurried retreat, as former *apparatchiks* turned populists steam back into power, the classical-liberal government headed by Prime Minister Klaus enjoys no serious political challenge from left or right. Prague is in full bloom and the Czechs are far too busy tending garden to launch the *dirigiste* backlash which swirls violently just beyond.

The Czech reforms were uniquely radical in transferring property from state ownership to private hands, and the society has responded with a flowering of initiative and entrepreneurship. And something more: civility. Politicians in the Czech Republic do not triumph by denouncing foreigners and Jews; the disagreements and arguments of this democratic land have not produced gridlock; frustration and hate do not cloud the cobbled byways of beautiful and historic Prague. And 56 percent (to 12 percent pessimists) of Czech citizens feel "generally optimistic" about their future.

Soon after the communist government in Prague collapsed in the "Velvet Revolution" of November 1989, a government was formed by the new prime minister, Václav Havel. One of the greatest of the dissident writers in Czechoslovakia, Havel earned his anti-communist stripes by doing hard time in a socialist reformatory. He commanded a powerful moral authority. Havel's economic ideas were, however, somewhat poetic; his principled opposition to the hardness of communism had made him squeamish vis à vis the harsh realities of a market economy.

Ironically, Václav Klaus, an economist who had not participated in the dissident movement, was inherited by Havel as finance minister, having been appointed by a gasping "reformist" communist government in 1989. By June 1990, Klaus had split from the Civic Forum, Havel's party, to form his own Civic Democratic Party, a party preaching a faster, more radical transition to capitalism. After the election of June 1992, Klaus replaced Havel, who was moved to the largely ceremonial position of president. Consistently, Czechs say that Havel, while a national hero, is simply "too soft" to make the hard decisions. Klaus is not.

Klaus's tough love won the policy debates early on, a fact Klaus credits to the one favor which Soviet domination had granted. When Russian tanks rolled through Wencelas Square, crushing the Prague Spring of 1968, they discredited the notion of "reform socialism" forever. When someone suggested a "third way"—neither capitalist nor communist—Klaus says the answer was smart and final: We tried that. When economic policies end up flattened with tank-track marks on their topside, you tend to remember the botch.

Annual Systemic Changes in Eastern Europe: 1993

	Percent Change in Gross		
	Inflation	Domestic Product	Unemployment
Poland	37.6	4.0	15.7
Czech Republic	18.2	0.0	3.5
Slovak Republic	25.1	–4.7	14.4
Hungary	21.1	–1.5	12.2
Slovenia	22.9	0.0	15.0
Bulgaria	64.0	–4.0	16.4
Romania	296.0	1.0	10.2
Estonia	35.7	–6.0	2.6
Latvia	34.9	–19.9	5.8
Lithuania	189.0	–16.0	2.0
Russia	847.0	–12.0	n.a.
Ukraine	8940.0	–15.0	n.a.

Source: Official forecasts adjusted by the Stockholm Institute of East European Economics. Numbers are preliminary. As presented in Anders Åslund: "Lessons of the First Four Years of Systemic Change in Eastern Europe," *Journal of Comparative Economics*, 19, 22–38 (1994), Tables 1–3.

So the path was clear for quick action. Even before he became prime minister, Klaus and reform-minded liberals had enacted a commercial code (partly borrowed from Germany but tailored to domestic institutions), a restitution process, and a privatization law. The code set up a legal system so that contracts and property rights, the necessary legal pre-conditions of a market economy, could flourish. While establishing the most far-reaching restitution program in the Eastern bloc, the law set lightning-fast deadlines—those who wanted to file claims to "reprivatize" property expropriated by the communists after 1948 had less than a year, until September 30, 1991. The government did not want properties in limbo for years of wrangling over historic ownership rights. The initial privatization policy was intended for small-scale enterprises—restaurants, retail stores, printing shops, gas stations—to be sold by local governments. Since they were small potatoes, the move was relatively easy and uncontroversial: New owners would run things more efficiently, and it was not complicated to figure out who owned what when just a dab of physical assets were involved.

Restitution claims were opened up in November 1990 and moved about $4 billion in assets immediately into private hands. In all, some 100,000 physical properties, including farms, houses, and small businesses, were quickly restituted. Small-scale privatization auctions began January 26, 1991, and were essentially completed by the end of that year, when over 20,000 properties had been sold (25,584 by the end of 1993). The results were encouraging: Workers or others knowledgeable about a business were typically high bidders, and entrepreneurial talents were immediately unleashed. Managers who had adroitly pilfered state assets were turned into profit-minded capitalists in the stroke of a winning bid. Resources became efficiently utilized, and consumers gained a new importance.

The change was visible to the naked eye. As a visitor to Prague in July 1990, I was pained over the gaping hole in the consumer-service infrastructure. Restaurants were rarely open to tourists, even when personnel were on duty and tables empty, and shopping opportunities for convenience items were absolutely nil. The food was abominable; each meal seemed a weird experiment in nutritional efficiency (don't even ask about the communist-bloc yogurt). Just over a year later, in September 1991, I returned to a city bursting with bars and restaurants which *catered* to the tourist. The food was good—and cheap. By September 1992—the food increasingly delicious—I was complaining about rising prices and the annoying influx of Western fun seekers. Today the secret is out, and the streets of Prague are clogged with consumer demand.

Small-scale privatization was, however, only the beginning. The core of the Czech reform program, and what has driven its successes full throttle, is the tactical genius demonstrated by a Bolshevik troika of free-market economists in Prague. First there is Klaus, a relatively anonymous number cruncher who worked in the banking sector under the communists. And then there are two former professors at the Prague School of Economics who fell under the sway of the late Nobel-prize winning economist F. A. Hayek: Tomáš Ježek, Hayek's Czech translator and the first minister of privatization (now a member of the Czech parliament), and Dušan Tříska, a flamboyant intellectual-turned-entrepreneur, who currently runs an electronic stock exchange more computerized than NASDAQ. From Hayek's work, they learned subtle lessons about information, property rights, and institutional transformation no other former communist country has taken to heart.

East European Optimism: 1994

Country	Percent		
	Optimistic	Uncertain	Pessimistic
Czech Republic	56	32	12
Hungary	44	39	17
Poland	36	42	22

Source: *International Herald Tribune.*

Reform elsewhere has had a hierarchy: 1) establish macroeconomic stability (bring inflation under control and stabilize the exchange rate); 2) create, or patch up, commercial law; 3) deregulate prices; 4) liberalize markets by allowing new entry including imports; 5) privatize small-scale enterprises; 6) privatize large-scale enterprises. Country after country has worked from the same list; time after time they have stalled out before getting to step 6.

The Czech market reformers' list is just as comprehensive but prioritized differently. They have always seen the *central* reform, on which all other success hinges, as getting the vast bulk of capital out of the state's hands. The other reforms are merely a prelude to the central symphony of capitalism: private ownership of the means of production. Klaus considered a halfway market-socialist economy merely a higher circle of hell. His strategy rejected gradualism at two fundamental levels. Economically, only privatization of the great majority of productive assets could lead to the ultimate payoff—massive industrial restructuring. And politically, only the presentation of an aggressive, radical plan—a plan with a capitalist vision—could defeat the overwhelming reactionary forces of stasis and ugliness.

The Czech reformers believed that the approach preferred by Havel and most of the post-communist regimes in Eastern Europe was wrong in its economics—it eschewed radicalism in favor of perestroika—and in its politics—it offered paeans to democratic *process* but denounced strong political parties or platforms. This soft-pedaling of reform coupled with the romantic belief that democracy would, by itself, solve the problems of post-communist society, was absurd to the strident market liberals led by Klaus. They became democratic Bolsheviks, committed to creating a strong platform and a clear vision of bold, decisive public action. They saw the power vacuum created by the collapse of communism and argued that if a dynamic liberal agenda did not quickly fill it, reactionary sloganeering soon would.

The radical capitalist reforms in the Czech Republic reflect the belief that the key to success is a shift in the property-rights

structure of society. As Klaus noted in a November 1993 speech at the Czech Economy Society in Prague: "The key task is looking for an owner who will perform post-privatization restructuring, not for a state bureaucrat who will restructure the firm before privatization."

The Czechs augured that without a radical shift to private property, reforms would be fruitless. How could one "reform" a vast auto plant if it were still owned by the state? Or bring balance to government expenditures if subsidies to bankrupt government companies continued? Or end subsidies if state ownership continued? Or restrain wages if the government employed most of the work force—a work force that now voted in non-rigged elections? Klaus saw quick privatization of state assets not as a luxury, but as the essence of reform. It would, he said, "minimize the period of pre-privatization agony, because no method exists to rationalise the behavior of firms waiting for privatization (without reintroducing central planning)." The parenthetical is hardly a throw away: It is the approach, to one degree or another, of rising political parties in every other country of the Eastern bloc.

Not only did reform without private property, and lots of it, make little economic sense, the Czech liberals believed that the only way to keep the reform flame on high was to overwhelm the public with so much opportunity that Czechs would not have time to quarrel over details. Dumping massive amounts of state property into private hands would not only achieve efficiency—production goes up as socialism goes down—but create a feeding frenzy on the corpse of the socialist state. This frantic cleansing process channeled society's political energy in a most productive way. Instead of decades-long maneuvers to position this or that interest group for the next well-considered round of privatization, the most calculating men and women snatched their opportunities to become vested in the property now (briefly) available. The social dynamic was goosed by a rush not to chaos and disorder—as in the first Bolshevik uprising—but by the self-affirming excitement of a race to stake their claims. The gold rush was on, and Czechoslovakians were given one brief shining moment to either become capitalists or to sit on the sidelines of history. Entrepreneurs overwhelmed the political fixers, and the Czech Miracle was born.

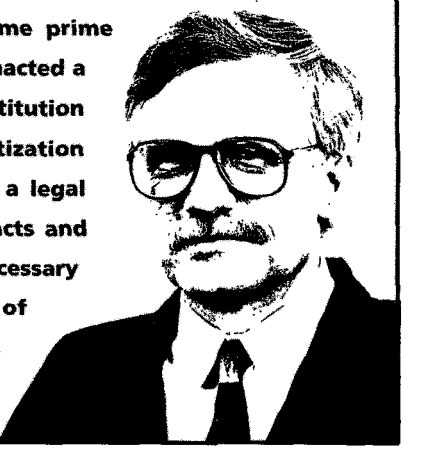
Structurally, there are two key elements to the Czech economic reforms. The first is the logic of the "mass privatization." This was an idea hatched by Dušan Tříska, who had seen the plan suggested in a Polish policy paper in 1989 and knew about a giveaway of the government's power company to citizens in British Columbia in the 1970s. Adult citizens would bid for companies with voucher coupons, with each entitled to buy one booklet of 1,000 "points" for a nominal sum. The idea was appealing because simply transferring assets to private citizens is equitable and democratic. It also had a very practical aspect to recommend it: Assets could be privatized with minimal payment. That's a fairly important feature when you are dealing with 15 million near-penniless survivors of communism. So on philosophical grounds—"you *deserve* a break today"—as well as pragmatic ones—"no cash? no problem!"—turning over state enterprises to the citizens, one man, one share, seemed the right thing to do.

But a second structural aspect has been equally important. It is the creation of succeeding "waves" of large-scale privatization, a formalized sequencing of abrupt deadlines by which project proposals have to be submitted to the Privatization Ministry. This seemingly bureaucratic constraint—calling for private firms or individuals to create great mountains of paperwork for government to administer—was an economic brainstorm. What it did was motivate a massive unveiling of the information as to what, exactly, constituted the Czech capital base. Not only what land, equipment, inventories, and productive capacity already existed, but what *could*—if reasonably deployed—exist in the future.

The information that the Czechs needed to privatize 3,000 large state enterprises was vast. The central authorities had little actual knowledge of the stock of social capital; the communists may have laid claim to most everything, but they were terribly sloppy bookkeepers. Just finding out what state enterprises consisted of—their physical equipment and inventories, their land and bank accounts, their liabilities, their accounts receivable—was a mess. The national financials, in other words, made Bill Clinton's foreign policy look orderly.

Just one complicating factor, for instance, were loans from one firm to another. Since the state never let any company go bankrupt, managers had incentives to borrow to the max. Who would lend? Other firms, of course—who could register paper assets (interest-earning bonds) while going to still another firm for needed working capital. If push came to shove, the government would rush in and offer subsidies to mitigate financial losses. It was a financial shell game, and, because firms never suffered for defaulting or being defaulted upon, no one entity really knew which loans were operative at any one time.

Even before he became prime minister, Klaus had enacted a commercial code, a restitution process, and a privatization law. The code set up a legal system so that contracts and property rights, the necessary legal pre-conditions of a market economy, could flourish.



Against this lack of information, the secret weapon in the Czech Republic's remarkable transformation is what Klaus adviser Tříska calls "the highly flexible concept of a privatization project." Instead of bureaucrats going over the books and deciding what state assets to unload and how, the process is bottom-up. The public petitions the government to privatize a particular

property. In effect, private citizens compete to present the best "privatization project" to the state. The advantage is obvious, according to the deputy secretary of the Privatization Ministry, Roman Ceska, who told me in September 1993: "We suffered from the Hayekian information problem."

This is the classic situation in any modern economy. As brilliantly posited by the late Austrian *cum* English economist F. A. Hayek, the problem is that (even in the best of circumstances) the essential bits of data upon which economies actually run are dispersed throughout society. The pertinent facts concerning demand and supply are known only to individual people who will only reveal such information when it is in their interest to do so. This is not the sort of governmental problem that can be fixed by further research. The data are *nowhere* available. Information about how, exactly, to achieve efficiencies are hidden deep within the recesses of the human imagination, only to be unlocked by the magnetic force of self-interest.

The Czech reforms have been explicitly designed to tap into this informational gold mine. Rather than dictating the terms of large-scale privatization in a world of darkness, the government has accepted proposals from private persons (not restricted to citizens—everyone, even foreign corporations, could play). The rules of the game were established by the privatization authorities and the deadlines were brutally short. But the projects were all designed by the private sector.

An example is provided by the privatization of the Hotel Pariz. A beautiful old inn built in 1903–07 and standing less than one mile from Wencelas Square in Prague, the building spans six stories and features 100 rooms, one café, one restaurant, and two banquet rooms. It has a secretarial center and will soon house a health club.

Antonín Brandejs is the general manager (and part owner). A Czech in his early 50s, Brandejs left his country during the political turmoil of 1968, living as a global nomad in Germany, France, Canada, and the Middle East. With the collapse of communism, he returned and sought to reclaim the business his family had owned since his grandfather purchased the hotel in 1923. It had been expropriated by the communists in 1948.

The struggle for the Pariz began in January 1991 when, under the newly enacted restitution law, Brandejs's family began the process of making a claim. They were entitled to the physical property minus the value of any improvements. But how you measure the value of such improvements is just the pesky sort of complication that has hammered every restitution program in Eastern Europe. An enormous amount of money had been spent in recent years on renovating the hotel, but much of the money was either wasted (for instance, some rooms in the luxury hotel were left without bathrooms and had to be re-renovated) or pilfered (through insider dealing, with suppliers giving kickbacks to hotel management).

In a capitalist economy such historical accounting numbers are irrelevant in private transactions: Why do I, a buyer, care if you poured money down a rathole?—I won't pay you a penny more for it. But when the state is restituting only part of an asset, the division of spoils requires some estimate of how much the government's part is worth. Not only did the process use book values to represent the portion they would not restitute, state managers strategically drove up book values with crazy expenditures (made with state funds) in the last days of socialism. This in a deliberate attempt, says Brandejs, to make it more difficult for people such as him to regain lost assets.

Brandejs finally gave up on restitution. It would take years, he felt, to assert his claim—and there emerged a much faster way to do just that: He submitted a privatization proposal to the Ministry of Privatization in January 1992. It wasn't easy. The state managers who controlled the hotel played all kinds of games with the books; no one could make heads nor tails of the operating numbers. Why the subterfuge? The hotel's managers themselves had submitted two privatization proposals, one "basic," another "competing." (The second bid brought in an Asian partner to finance still more renovations and offered to pay off Brandejs's restitution claim to the tune of $250,000.) Brandejs's proposal emphasized his restitution rights but also put up cash—nearly $3.5 million to the state. In addition, his company offered to assume all hotel debts.

The competitive process was grueling and lawyer intensive. Brandejs spent precious dollars preparing his bid, presenting his case at hearings before both the Ministry of Privatization and the Ministry of Trade. The managers withheld information as fiercely as Brandejs sought it; both parties politicked heavily. In the end, however, Brandejs won, getting approvals from both ministries and the national government, a three-stage obstacle course designed to provide checks and balances to limit corruption.

It took less than six months for Brandejs's proposal to receive final approval in July 1992. While Brandejs himself believes the process was grueling and drawn out, it worked like lightning compared to the alternative. Although he had begun his restitution claim a year earlier, what U.S. court could manage such a complex matter so adroitly in such a flash? And the criteria that gave Brandejs's family the winning edge flowed from legitimate principles of law: His family did have a moral claim to restitu-

Antonín Brandejs used the Czech privatization program to buy back a hotel expropriated from his family by the communists.

tion and his proposal, which stressed that the business would be run as a family operation in a long and proud tradition, was found as the superior productive use of the assets. The judicious outcome considered both equity and efficiency as positive social goods, the perfect signal to send a society in transition to a market economy.

The Hotel Pariz today exudes the tender loving care of grandpa Brandejs's own, having been renovated from January 6 to March 31, 1993. Antonín is very proud of this speedy renovation, considering that under socialist management the hotel was closed nearly seven years before reopening in 1987—when managers discovered the missing bathrooms, leading to another two years of closure. Antonín works long hours and is a whirl of managerial energy. His brother manages the kitchen; his cousin's husband is an assistant manager. The hotel's staff of 130 has been kept on. But under the new management—and new work rules—some have decided to leave. Overall employment is up slightly, to 135, due to increased business. The occupancy rate in October 1994 was 86 percent—superb.

The two managers who ran the hotel for the state are long gone, but both are prosperous. One serves as a consultant to the many new private hotels springing up to service Prague's booming tourist sector. The other opened a new restaurant. When I asked Brandejs where a civil servant would get the money to do that, he smiled: "You don't have to ask," he said.

So Czech privatization has largely overcome the Hayekian knowledge problem by encouraging competition among the very people most likely to have the relevant information. As Roman Ceska, the former deputy minister of privatization and current minister of the National Property Fund, puts it: "This is the only way to get information into the process. It was an open competition to submit a proposal. Everybody was invited—the municipalities, the companies, the consultants—and were giving us their ideas. This created a flow of information to the Ministry of Privatization. The only problem is that we were deluged with so many project proposals"—over five proposals for each of the Czech Republic's nearly 2,700 large state enterprises.

Under laws passed in February 1991, the newly formed Ministry for Privatization compiled a list of large-scale firms to be privatized. Managers of each firm—for instance, the Hotel Pariz's former state managers—were required to submit a "basic" proposal, including key legal and financial information, as to how to privatize the assets. Excepting only infrastructure industries such as the railways, hospitals, and utility companies, every Czech firm—even behemoths like the Kladno factory with 20,000 workers—was fair game for privatization. On November 1, 1991, the ministry published the names of more than 1,000 firms eligible for privatization and invited competing proposals from the public as to how each firm should be privatized. The deadline for submitting such proposals was January 18, 1992. (When an enterprise had no proposals, the ministry would create its own proposal, usually dumping the company's shares into voucher privatization.) The process ignited a flurry of political and financial activity and about 15,000 proposals.

This was a magnificent database for rationally—and quickly—divesting the state of its (potentially) productive assets. Insiders who submitted basic proposals had incentives to draw up coherent privatization plans because their proposals were subject to outside competition. In the end, insiders saw about half their proposals accepted—a much higher rate than that enjoyed by outsiders. The key to their success was two-fold: They provided relatively reliable information, *and* they relied heavily on voucher privatization. Competing privatization proposals tended to rely much more on direct sales to new manager/owners. Ministry officials, conscious that a surprising number of citizens were purchasing voucher coupon books, wanted to reward the general public as much as possible.

Czech privatization has largely overcome the Hayekian knowledge problem by encouraging competition among the very people most likely to have the relevant information. As Roman Ceska, the former deputy minister of privatization and current minister of the National Property Fund, puts it: "This is the only way to get information into the process. It was an open competition to submit a proposal."

In selecting among rival proposals, the Ministry of Privatization was able to award property rights not in a *perfect* manner, but in at least a plausible way, one that avoided rampant confusion and chaos. Moreover, it realigned political interests: The instant the process began in earnest, thousands of prospective entrepreneurs (those submitting privatization proposals, each including some benefit to the authors) began to push hard *for* privatization. Since state managers were intimately involved in *this* competitive process, it removed them from the ranks of another competitive process: obstruction. In every other post-communist country, these *apparatchiks* form the core of opposition to reform: Why help privatize what you (as a state manager) can pilfer? The Czech answer: If you don't help us privatize, someone else will.

Privatization projects included various means for transferring state assets to private owners: direct sales, tender offers, restitution, auctions, and voucher coupons. All told, about half of the book value of large-scale privatization was distributed via vouchers—$10 billion. Beginning October 1, 1991, Czechoslovakian citizens over the age of 18 were invited to purchase their 1,000-point booklet to use in the voucher privatization auction. These coupons were officially registered for 1,000 Czech Crowns ($35, about one week's wages) at over 650 outlets across the country.

In original surveys, only some 2 million participants were anticipated, and Western consultants and bankers pooh-poohed the idea in great spasms of laughter. The spectacle of hapless financial illiterates understanding market investments was just too funny. When Klaus, as finance minister, explained precisely what

he planned to do with voucher privatization to a group of industrialists and financial experts in Vienna, Austria in 1990, the corporate bigwigs thought he was insane, reports Albert Zlabinger, an academic economist in Vienna who set up the meeting.

Yet some 8.54 million citizens—71 percent of eligible purchasers—bought and registered voucher coupons. Enthusiasm was spurred by the spontaneous emergence of investment privatization funds (IPFs), some of which guaranteed 20,000 Crowns for those willing to turn over their 1,000-Crown investments. In the Czech Republic alone, 186 separate companies established 264 IPFs in the first wave (and another 353 funds in the second wave). They entered a competitive fray to represent investor interests and advertised heavily, thus increasing demand for coupons. Some 72 percent of all the coupon points were entrusted to such funds in the first wave of privatization.

Privatization Summary*

Method	No. of Assets	Book Value in billions	Time Period
Restitution	>100,000	$3–5	1990–91
Small-scale privatization	25,584	$1	1991–93
Large-scale privatization	4,000	$20	1991–95
Voucher privatization	2,200	$10	1991–95
Municipal transfers	n.a.	$12	1991–93
Foreign investment	n.a.	$2	1991–93

*includes assets held in Czechoslovakia prior to 1993 breakup.

Source: *The Privatization Process in Central Europe* and *Small Privatization: The Transformation of Retail Trade and Consumer Services in the Czech Republic, Hungary, and Poland.*

Actual bidding for shares began on May 18, 1992, three weeks before the elections which would catapult Klaus's Civic Democratic Party to power and place the economist in the strategic position of prime minister. Indeed, political opponents argued then (and now) that the mass privatization scheme was pandering to popular sentiment. A most splendid compliment, given the violent populism which has elsewhere sprung up in *opposition* to capitalist reforms.

The voucher auction was conducted in five rounds in the first wave of large-scale privatization, six in the second. On the first pass, each company's stock value was set at the same price (three shares for 100 points). If a firm's stock shares were oversubscribed, the price on the next round was raised; if undersold, then the price reduced. On the next round, bids were again registered, and adjustments similarly made. Whenever excess demand was less than 25 percent, shares were allocated to bidders on a pro-rata basis (with individuals favored over funds) and the issue taken off the board. This iterative procedure continued until the final round. At that point, unsold shares were deposited in the National Property Fund, and oversubscribed issues were awarded on a pro-rata basis. The bidding in the first wave was concluded December 20, 1992.

The book value of the 1,491 Czechoslovakian companies scheduled for voucher privatization had been about 299 billion Crowns ($11 billion), although initial market valuations turned out to be roughly half that. Hence, the state was endowing each participating citizen with a stake in the new society, albeit something less than 40 acres and a mule—about $700 per voucher player (in the first wave) at November 1994 market prices.

And the physical process of transferring the assets went sensationally well. The daunting task of evaluating firm values was handled smoothly and efficiently—by fund managers. These experts compete to be agents for investors for a modest percentage commission. The lack of sophistication of Czech citizen-investors turned out to be a non-issue: Despite the prevailing skepticism and the virtually ubiquitous condemnation of mass privatization by Western policy analysts, the market institutions needed to make a non-traumatic transformation arose instantly in the newly privatized world. The mere existence of private assets spontaneously created—as if by an "invisible hand"—the means needed to manage capital shares.

Western experts had warned that giving away stock shares to citizens was doomed to failure because of the "dispersion" issue. Where stock ownership is so widely distributed that no one party has an incentive to monitor the value of firms or the performance of managers, financial chaos reigns. Investment does not go where it is best utilized, and company managers tend to goof off. The classic example, of course, was state socialism itself: Although everyone "owned" state enterprises, such nominal ownership placed no effective constraint on managerial behavior; hence the state managers looted the enterprises they ran.

Yet the Czechs again relied on a bottoms-up strategy: Simply hand off equity ownership to individuals and allow markets to find a solution. Poland, on the advice of the World Bank, employed precisely the reverse strategy. There the state has searched for responsible new owners by attempting to place large state enterprises into 10 or so investment portfolios, to be managed by professional stock experts. The plan required agreement on how the funds would be structured as well as how assets would be allocated between them. The plan has been debated for four years.

Conversely, the Czechs simply let the market decide ownership structure. What spontaneously emerged was a competitive mutual-fund market. Hundreds of competing investment portfolios were created, with about 12 large funds accounting for half of total investment points. The competition keeps fund managers focused, and the funds' scrutiny keeps the privatized firms' management honest and efficient.

Restructuring companies that have been run for the benefit of state managers, often in conspiracy with feather-bedding employees, is a brutal task. Firm insiders will continue to depreciate the capital base unless confronted by well-informed and highly motivated monitors. To monitor managerial performance on the stockholders' behalf, Czech mutual-fund managers have climbed onto corporate boards, becoming intimately involved in managerial decision making. Each fund is, really, an army of takeover

artists: It sets its agents upon state enterprises with the assignment to take the assets back for productive use.

Stanislav Ryška is a socialist manager who is happy to be a takeover target of capitalism. Director of development for Tonak, a Czech manufacturer of hats since 1799, Ryška was perpetually frustrated by the internal contradictions of socialism. Despite excellent export opportunities for its products, the state enterprise was at the mercy of another state firm, Centrotex, which had been given a monopoly over textile exports. For reasons known only to the bureaucrats themselves, increasing Tonak's exports was considered uninteresting. Freed of these shackles, Tonak's exports are booming—indeed, total Czech exports to the European community shot up 116 percent from 1989 to 1992—and Ryška's salary is up 300 percent.

Managers are not supposed to take so kindly to the brutal efficiency-enforcers of financial markets. But good managers, of course, prosper more than ever; the cries of anguish come from those who lose their access to fluffy jobs, ill-gotten perks, and socialized slush funds. Ryška, who now works closely with mutual-fund managers representing Tonak shareholders, is the pillar of corporate diligence, constantly on the alert for new export possibilities. Once suppressed by a system that rewarded mediocrity on the job and subservience off it, the entrepreneurial manager is today on the rise.

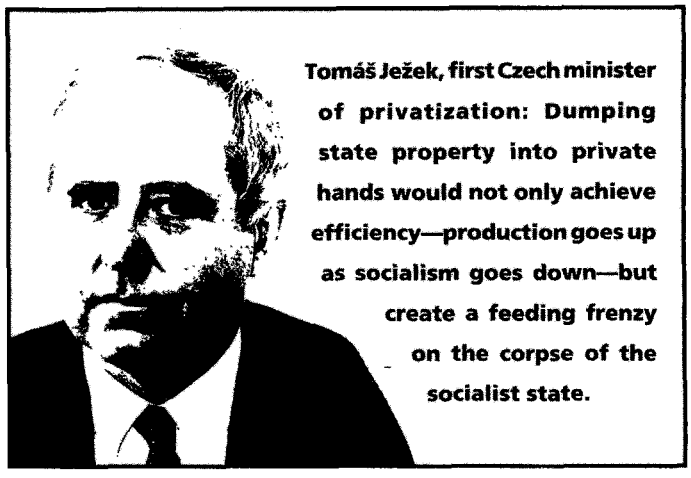
Competing privatization proposals for Tonak were submitted by the firm's managers. The winning proposal included a sale of 2 percent of the company's assets to a group of employees, with 78 percent of stock equity to go into voucher privatization. (Twenty percent of ownership shares were given to the National Property Fund, which pays restitution claims to people who cannot recover physical assets—for instance, those thrown in jail by the communists.) Emphasizing voucher privatization was a common ploy by managers who thought dispersed ownership would help keep them solidly in charge. But after the dust settled on five rounds of voucher bidding, 45 percent of Tonak's shares were owned by three mutual funds, with 24 funds accounting for 58 percent. Just 20 percent of shares are owned by individuals—fairly typical. Of the five members of the executive committee of the board of directors, three represent investment funds (Harvard Capital & Consulting, the largest fund, Srejber Investing-Mutual Fund, and the Czech Savings Bank).

The new owners cut employment at Tonak from 2,050 to 1,750, mainly by attrition. About the same time, the firm's eastern export market collapsed: It shipped 30 percent of its output to Russia in 1989, but only 3 percent in 1993. Yet sales overall surged, and real output per worker—in just the first year of privatization—increased 20 percent.

The way in which it happened demonstrates the complexity of the economic system. The company's main product is furry hats made from rabbits. In fact, Tonak produces more traditional rabbit fur hats for Orthodox Jews than any other supplier in the world. Prior to privatization it had largely exported components to be assembled elsewhere. Since privatization it has been exporting finished product—with enormous marketing success. It has also found a ready market for its hats in...Australia, of all places.

Tonak has also rationalized its manufacturing, buying new Swiss machinery to monitor the quality of its skins and getting more final product out of each animal. Under state ownership, the factory used only 34 percent of each rabbit pelt. Now, it plans to squeeze 75 percent out by the year 2000. Part of this efficiency push is motivated by a desire to economize on the firm's waste-disposal fees. Labor practices are likewise adjusted; about 30 percent of employee compensation now depends on the number and quality of hats produced.

Each of these steps represents a step toward economic rationality, and it is the sum of millions of such tiny productivity gains



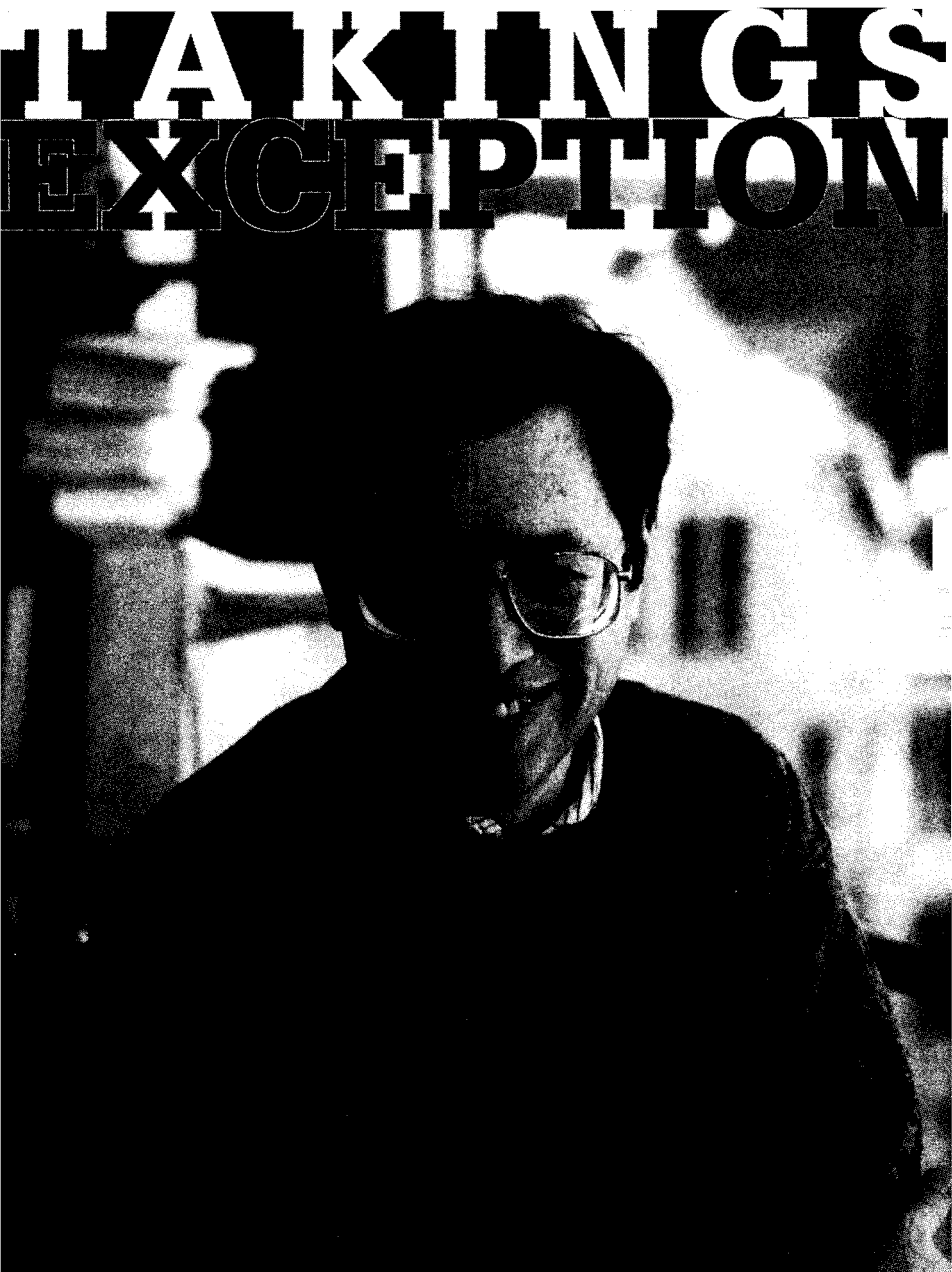
Tomáš Ježek, first Czech minister of privatization: Dumping state property into private hands would not only achieve efficiency—production goes up as socialism goes down—but create a feeding frenzy on the corpse of the socialist state.

that will stitch together the Czech Republic's coming prosperity. Each requires a modicum of imagination and an abundance of fortitude—there is always and everywhere resistance. Under state socialism, Ryška had to battle his managers, other managers, and Tonak's workers with each little push toward a more efficient world. Worse than enemies were his lack of friends: Who will join the battle for social prosperity when all it brings is trouble?

But Stanislav has found some new friends. They are called stockholders and they—or their paid agents—conspire with him regularly. "Mutual funds played a very positive role in reforming management," he says today. They supply a pressure for efficiency—a vacuum under socialist management. And while this new tension satisfies profit-hungry shareholders, it also serves the larger social interest. The new regime forces firms to be consumer friendly, to reward industrious employees, and to invest in productive assets and technology (no matter whose petty fiefdom is challenged). This ruthless drive to economic rationality is what will finally yield the fruits of material prosperity in an advanced market economy, and it is today what fuels the striking optimism uniquely observed in the Czech Republic's recovery from communism.

Contributing Editor Thomas W. Hazlett teaches economics and public policy at the University of California, Davis. He has been a faculty member of the Foundation for Teaching Economics Seminars at the Prague School of Economics and is a senior fellow of the Liberal Institute of the Czech Republic.

TAKINGS EXCEPTION



Maverick legal scholar

Richard Epstein on property, discrimination,

and the limits of state action

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Interviewed by Steve Chapman

Richard A. Epstein, the James Parker Hall Distinguished Service Professor of Law at the University of Chicago, is one of the most provocative, controversial, and influential legal theorists in the country. His three best-known books, *Takings: Private Property and the Power of Eminent Domain* (1985), *Forbidden Grounds: The Case Against Employment Discrimination Laws* (1992), and *Bargaining with the State* (1993), are powerful contributions to the theory of limited state powers.

"I took some pride in the fact that [Sen.] Joe Biden (D-Del.) held a copy of *Takings* up to a hapless Clarence Thomas back in 1991 and said that anyone who believes what's in this book is certifiably unqualified to sit in on the Supreme Court. That's a compliment of sorts," says Epstein. "But I took even more pride in the fact that, during the Breyer hearings, there were no such theatrics, even as the nominee was constantly questioned on whether he agreed with the Epstein position on deregulation as if that position could not be held by responsible people."

Epstein's work is characterized by a relentless and rigorous use of reason. While developing a position on a given issue, he is constantly searching for an argument that fully accounts for the facts at hand and all possible rebuttals. "My attitude is talk is cheap, so let's debate," says Epstein, whose newest book, *Simple Rules for a Complex World*, was just published by Harvard University Press. "When I'm confident I'm right, I want people to disagree with me out of hand. Otherwise, I run the risk of a kind of complacency which can lead to the loss of a cutting edge. I'm perfectly used to living in a world in which most people disagree."

Chicago Tribune columnist Steve Chapman interviewed Epstein at his University of Chicago office.

Reason: How did you get acquainted with libertarian ideas?

Epstein: My intellectual style has always been that of a contrarian. I think that if there's a position everybody thinks is right and is happy with, then they're probably wrong. And the reason they are probably wrong is that they spend too much time on self-congratulation instead of attacking each other.

I studied law in England. The great advantage of English law schools, at least in the 1960s, was that they left you alone. I didn't have teachers who told me what to think. The English system was to read a bunch of stuff and then talk to a tutor for an hour and then read another bunch of stuff and then talk again with the tutor for another hour. The only direction I got was being told to read the 19th-century judicial opinions.

These 19th-century guys were all high-powered intellectuals who had strong libertarian views. So I read a huge amount of things which resonated with my own maverick instincts. By the time I came back to Yale and I heard what the dominant collective sentiment was circa 1966, I knew that I had gone off on a very different path.

The experience of being wayward and independent allowed me to dip into a set of sources that few American students read. I think the most important thing about my career was that I was not socialized early on to the dominant views.

PHOTOS: MATTHEW GILSON

Reason: Despite your libertarian leanings, you feel that pure libertarianism isn't quite up to explaining the way the world works. What do you see as its shortcomings?

Epstein: There is the kind of libertarian universe in which every individual has property rights in his or her own name, and all individuals have the exclusive right to use and dispose of their possessions—land, capital, so forth. Coordinated behavior takes place only through voluntary exchanges. That's a pretty austere world. Among other things, it precludes any government interference to prevent the premature exhaustion of common and pooled resources. And it prohibits any government system of mandatory taxation for any purpose whatsoever because it would be a forced exaction.

On the opposite extreme, there is a system in which you say the state can take from A and give to B because it wants to make B better off. It's quite willing to make A worse off to do so. That looks to most people like theft mediated by legislative behavior.

The traditional accounts of laissez faire and the welfare state have basically said that those are the only two viable alternatives that somebody can describe. And since it's perfectly clear to most people that we cannot have a world with zero taxation, zero police force, and so on, they feel we have to accept the world in which there is extensive government regulation and massive amounts of redistribution through taxation and other systems of social control.

What I said in *Takings* is, No, there's a *tertium quid*, a third alternative that allows government regulation and taxation to be used to overcome the holdout problems, the public goods problems, the coordination problems. But the quid pro quo is that if you want to use these coercive powers, you have to provide benefits to the individuals who have been coerced that leave them at least as well off as they were before the coercion takes place.

You can't ridicule this theory the same way that you can a naive version of laissez faire. You can no longer argue that you can't have any state at all. You can no longer argue that public rivers are going to be destroyed by pollution. You can no longer argue that it's impossible to extract oil and gas from underneath the earth in any kind of a sensible fashion. You can no longer argue that it's impossible to have a decent bankruptcy law.

Essentially the point that I'm trying to make in *Takings*—and I come back to it again in *Bargaining with the State*—is that you can have a world with forced exchanges without having a world of rampant redistribution, that you can abandon laissez faire without falling into the lap of the New Deal. A well-ordered theory of taxation is supposed to accomplish that. It doesn't do it perfectly, but it gets damn close to it with flat taxes relative to progressive taxes.

Another way to put this is to ask, How are political decisions made? The libertarian world is one which requires the unanimous consent of all individuals in order to reach a political decision. We know that in the old days of the Polish parliament, which required unanimous votes, they often got unanimity by taking

the lone dissenter and throwing him out the window. On the other hand, rampant majoritarianism means that 51 percent can indeed confiscate the wealth of all 49 percent, which is what you get under the New Deal.

What the eminent domain compromise says that makes me a moderate is that we will allow the majority to have its way so long as it's willing to buy off its dissenters at a fair valuation. We can bring ourselves to a position in which we stop anybody from being made worse off by virtue of collective impositions.

Reason: *Takings* has significantly influenced the way the courts interpret the Takings clause of the Fifth Amendment. Are you encouraged by the impact?

Epstein: On an intellectual level, not very. To figure out what's going on with takings cases, you have to break them down almost area by area. Before the book came out, the basic attitude was that all matters of economic affairs were decided in the legislature. If you turned out to be very badly disadvantaged, all you could do was use political efforts to change the outcome. But you had no judicial recourse whatsoever.

The first of the breakthrough cases was *Nollan v. California Coastal Commission* [1987]. It raised an issue which has always been present but has never been explicitly answered: What's the extent to which you have to worry about extraction from the permit and approval system which undergirds the land-use system in the United States?

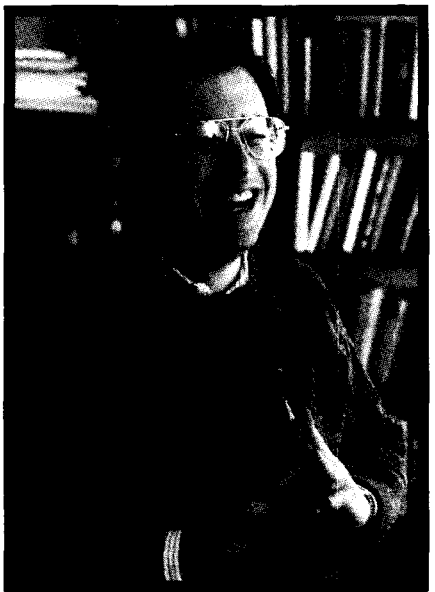
This was the case of an individual who had a small shack on a piece of beach-front property. He wanted to build a nice fancy house like his neighbors. The government said, "We'll let you build that house as long as you give us a lateral easement in the front of your property for our citizens at large to move to and from. You want the permit. You surrender the easement."

So libertarians were in a very odd position of trying to explain why it was that *this* contract was unjust and unconscionable. Justice Scalia tried very hard to do that. On one level, he said, we're going to give a higher level of scrutiny toward what governments do in these local property matters. But he was not able to fully articulate the reasons why this particular transaction is objectionable whereas other bargains that governments enter into with their citizens are not.

You're dealing with the hardest case in classical contract law: the one in which it turns out that the gains to both sides are evident, but nonetheless not as large as possible. This is different from the kinds of takings situations that most people think about—where property is just wiped out by virtue of government regulation or there's no potential gain to the regulated party.

The second big case came up five years later in *Lucas*. And once again, you've got a Scalia opinion and once again you've got a very fractured, intellectually confused result. In *Lucas*, a landowner was just told by the state: "No bargains here. You're not allowed to build a home anywhere on your entire plot of beach-front land because we're afraid that it might damage the coast. We think it's better that the land be vacant for the benefit of tourism and leisure." The landowner said, "That's a taking."

To people not versed in takings law, what else can the darn thing be? It doesn't seem like it's a very difficult case at all. In fact, the landowner lost in the lower courts, winning only when it came up in the Supreme Court. But he won on a theory which, to put it mildly, does not promise long-term serenity for the political realm.



"Essentially the point that I'm trying to make in *Takings*—and I come back to it again in *Bargaining with the State*—is that you can have a world with forced exchanges without having a world of rampant redistribution, that you can abandon laissez faire without falling into the lap of the New Deal."

The Court ruled that the reason we should take his claim seriously is that he's completely wiped out. The land had no residual value once he couldn't build on it. But, says the Court, if he had been told that he could only build a very small house—perhaps tucked off in the back of the land—then the state could more or less get what it wanted. So what the Court did was make a rule: full compensation for full wipeouts and no compensation for partial wipeouts, no matter how large. Then, with respect to those cases in which there are complete wipeouts, they ask (and rightly so) whether or not there is some kind of a common law nuisance that the state regulation was designed to prevent in a reasonable fashion, which wasn't the case.

But what Scalia did—and what was so terrible about the opinion—was to say essentially that the whole area of partial land-use restrictions is now beyond constitutional scrutiny. If you tell somebody they can't build a skyscraper but they can erect a four-story building—that they can't build a house but they can build a little tent or shack—then there's nothing they can do about it.

What was really needed was a coherent hearing which started from the ground up and took the very simple position that any time you impose a restriction on land use, the state has to either justify the restriction or pay for the value that is being deprived. Under those circumstances, the state will no longer have an incentive to hold a claim. But that was never done.

So now we have a set of rather funny rules that derive from *Nollan* on the one hand and *Lucas* on the other. The last of the big cases, which may ultimately be more significant than the other two, was the *Dolan* case [1994]. On its facts, *Dolan* was a more compli-

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cated version of the *Nollan* situation—the state was trying to withhold a permit. But it wasn't a pure case of exaction. There was a respectable argument that if you covered over large portions of the land, it would increase the amount of illegitimate runoff into a public creek, and some adjustment ought to be made for that. Justice Rehnquist had the right attitude. He said, Look, this is a certain set of circumstances in which it turns out that we cannot and should not tolerate a regime in which the state has perfect discretion over what it does and how it does it. But he could never figure out which frame of mind he should bring to a transaction which was imposed in part for good reasons—to prevent nuisance runoff—and in part for bad reasons—to extract an easement so that flood waters from other places could run peacefully by the Dolan land.

"What you need is a very strong and well-articulated theory which indicates that what you're trying to do is get the best of both possible worlds: to maximize the useful value of land and to minimize the amount of harmful pollution."

You need to have a way of talking about the relationship between constructive regulation and abusive bargaining to settle out the two components in the case. That is simply something which is not yet in the courts. What you need is a very strong and well-articulated theory which indicates that what you're trying to do is get the best of both possible worlds: to maximize the useful value of land and to minimize the amount of harmful pollution, so that when you sum up the positives and the negatives, you manage to get as many positives and as few negatives as is possible. That's what the policy of takings law should be.

Reason: Were you encouraged by the resolution of *Dolan*, if not the theory behind the decision?

Epstein: I was certainly encouraged by the higher level of scrutiny that they brought into it. I was encouraged by the fact that Justice Rehnquist intuitively knew that there was something fundamentally unfair about a situation in which everybody else who had land that fronted this river was paid if they were to surrender any portion of it and that this is the only guy who's going to be forced to give his land without compensation. The problem was that Rehnquist did not understand why it was that the particular practice that seems to be discriminatory and abusive was socially wasteful as well.

The only way you'll persuade the public to understand the urgency of the takings cases is to get people out of the frame of mind where they think that for every dollar that the public body wins, the individual loses a dollar. What typically happens is the public wins $1.00 and private owners lose $5.00 or $10. If you do that hundreds upon hundreds of times each year, you have a major drain on the social welfare of the community.

The way to understand property rights is as a system of rights designed to advance community welfare rather than to frustrate it. A coherent theory would allow you to understand that the public interest is the sum of all private interests and that those private interests are properly arranged and organized in a world which respects property rights but allows the government to take them so long as it compensates for the full extent of the losses.

Reason: How does your book, *Bargaining with the State*, address topics such as gun sweeps of public housing projects?

Epstein: The bargaining with the state problem is best understood by a reference to the discussion about *Nollan* and *Dolan*. It has to do with the situation in which the state conditions permits and licenses of one form or another on the willingness of individuals to play ball with some kind of reduction in land ownership. The police sweep question seems to be a straightforward Fourth Amendment kind of issue.

Normally, in a search situation, you require some kind of particular information about the places to be searched. People realize that if you're trying to look for guns and drugs in a public housing project, that particularization is not going to be possible. Yet there seems to be a strong impulse for trying to have the search nonetheless.

As a libertarian of sorts, I'm extremely nervous about having police sweeps that are done in unauthorized ways. Does this tie into bargaining with the state? Here's a possible answer: Suppose this was a private housing project and it turned out that the landlord said to all of the tenants, "Look, I'm willing to take you in, but there are so many guns around here that I'll never be able to keep my better tenants unless I protect them. So one of the rules that I'm going to require is that I can come in at any time with my private police force and inspect your premises and throw you out on your ear if it turns out that you have guns."

My attitude to that is, if some tenants don't like those terms, they can find another housing project and go elsewhere. Now let's suppose for the sake of argument that 100 percent of all privately owned and operated housing projects have these kinds of provisions. It would be very odd and idiosyncratic to say that the government couldn't include the same kind of provision in its leases.

But things become much more difficult if it turns out that the government wants to impose a set of conditions that private firms don't do, and the way they try to get your consent is to give you a public subsidy from other people's pockets so that you're willing to live in this place. It's the constant interplay between government subsidies being used to buy off resistance to constitutional ideals that is at the root of this problem.

In 1926, when this issue came up in a case called *Frost and*

Frost Trucking v. the Railroad Commission of California, the question was whether or not California could say to a private carrier who just hauled his own goods to market, "We're not going to let you on the public highway unless you agree to the same rate regulation that we post on public carriers." One of the arguments that Justice Sutherland made when he struck down that particular condition was that we would never allow the government to say that you can only use the public highways so long as you're prepared to waive your rights against unreasonable search and seizure with respect to your private houses and apartments. I think that's absolutely correct. The dangers of government monopoly power are so enormous that some kind of constraint has to be imposed upon them.

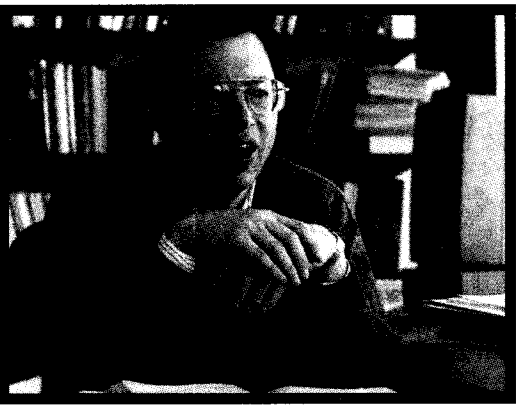
Reason: Should the Chicago Housing Authority be able to make granting you a lease in public housing contingent on your not possessing guns or allowing searches of your apartment?

Epstein: The first part of your question is relatively nonproblematic because it doesn't involve the search-and-seizure question. The other part is right there at the cusp and I would have to see what the provisions would be. I hate to sound professorial, but I haven't made up my mind about this on a concrete level. But let me give you two arguments.

One is that you clearly don't want to allow this thing to happen at all. It sets a precedent for the use of similar government powers, not only with respect to state buildings. Since the government is everywhere, they can say, "Well, we won't let you enter a national park unless you allow the government to inspect your private cars or homes for guns."

On the other hand, the folks who live in these projects have a pretty good sense as to whether or not the things asked of them cost them more than the things they get in exchange. And you find that 90 percent of the tenants in public housing are desperately in favor of these kinds of conditions. That pushes me to believe that, at least under guarded and limited circumstances, they can have this, especially if the government can show the level of peril that can be averted is substantial enough to get noticed.

"The first best solution to the problem of unconstitutional conditions and of difficult bargaining is always to try and restrict the government's sphere. Running housing projects is not a situation in which the government is providing a useful service."



I have a better solution. The true vice of public housing is that at the expiration of the lease, the government cannot expel disruptive tenants. The only way you can expel them is to have a trial that requires the neighbors to testify. No sane person will take the risk of retaliation. Instead, you get public housing projects in which a bad eviction policy means that the bad tenants drive out the good tenants and you have what you see in Chicago. You can stop the problem by the eviction policy without the search-and-seizure issue. The inability to come up with a solution unique to government, to think through the terms of a lease the government could offer and make stick, makes it clear how difficult it is for the government to be in charge of a business enterprise.

The first best solution to the problem of unconstitutional conditions and of difficult bargaining is always to try and restrict the government's sphere. Running housing projects is not a situation in which the government is providing a useful service.

Reason: Let's talk about another area in which you think the government is not providing a good example: civil rights. You've argued that blacks and other minorities have been hurt more than they've been helped. How is that?

Epstein: If you have a state which gets in the business of race relations, you have to look at the down side. That seems pretty clear in the case of Jim Crow legislation in the South. Jim Crow was not a case of a few laws; it was a situation in which the heavy hand of the state acted on all areas of life directly or indirectly.

In the modern context, you don't have to deal with the problem of government malevolence, at least with respect to minorities. But you do have questions about whether or not the effects are the ones you desire. It's usually assumed that if you pass a civil rights law, it will affect all blacks and all whites. But one of the things that's quite striking about the data is that the spread between the top and the bottom of the black population has gotten greater. One possible explanation is that civil rights laws tend to help those people who are in the upper end of the distribution and tend to hurt those individuals who are toward the bottom. Those people on the top are the people who get hired, and you know they'll do pretty well. You know that there's less likelihood that you will want to fire them. They help you meet whatever requirements as far as quotas and so forth, and so by all means you hire them.

But the case is different for those individuals who are less fortunate. If you know that you can't fire them because of antidiscrimination laws, the tendency is to let them languish rather than hiring them at all. The dismissal costs are just too high. So you get a huge dispersion effect. Well-off blacks are made better off and poor blacks are made worse off by these laws.

The second thing these statutes do is say, in effect, that minority workers are no longer allowed to use good old-fashioned competitive mechanisms to achieve entry into a market. If you're black, you can't get a job by underbidding a rival white worker and showing you're every bit as good. That option is not open to you—you can't compensate the employer for his perceived

greater risk. That means that people who are on the outside cannot use price-cutting techniques to improve their chances.

Another problem is that the civil rights laws systemically make it impossible to rely upon standardized testing to figure where people stand relative to their peers in a given market. The net effect is to force people back on stereotypes—racial or otherwise—when they make hiring or other personnel decisions.

When you have a statute which interferes with contractual freedom, it's going to reduce the total level of output and increase the total level of bureaucratic wrangling. Everybody who's a minority member is going to be victimized by that just the same as everybody who's a majority member. You have a situation in which there's less to go around and, no matter how clever you are with matters of distribution, people are always going to feel aggrieved when there's a shortage.

One of the things that is very clear about Americans today is that every group in society regards itself as a victim of discrimination. If you run a comprehensive survey of white males, white females, black males, black females, and members of other minority groups, you can't find people who don't feel that they are getting paid less than what they are worth for the work that they do. That means that you have a real morale problem because there is no way that you can satisfy everybody simultaneously.

What we have to do is find a way to get out of this cycle. The only way in which we can do it is to keep the government as far removed from employment relations as possible, except under those very rare circumstances where we think that there's an employer who has a monopoly position.

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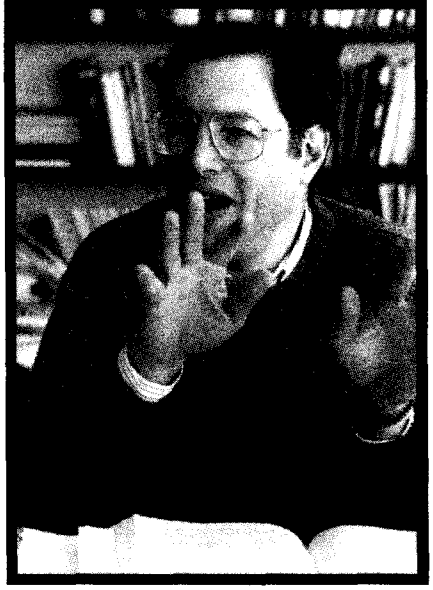


Reason: How would people be better off if we didn't have civil rights laws?

Epstein: For one thing, the number of job opportunities that would be available would probably increase because the cost of hiring somebody who's marginal will be reduced. When you look at the numbers, it is quite striking how much the black unemployment rate rose after the various civil rights reforms of the 1960s.

In any complicated social problem it's very difficult to make after-the-fact explanations because all sorts of things are going on. But if you're trying to figure out the level of black improvement in the United States in real terms, it was better in the period between 1946 and 1964 than in the period 1975–94. The greater improvement in the first period can be attributed to two things. One was a series of open-market principles that allowed people to move back and forth. The other was the emergence of a new dominant social consensus that the past practices of discrimination were just a mistake. You can check the data, but I think it will show you that, when controlled for education, etc., the ratio of black earnings relative to others rose very rapidly during that period. Basically, close to parity was achieved by 1963, 1964 with the passage of the civil rights acts.

Since then, the employment figures don't tell the full story. If you only look at the wages of those who are still lucky to be in the labor market, you're going to miss all the preclusive effects associated with the passage of laws that make it costly for employers to hire. You're going to miss the higher unemployment rates for black men and women.

So I'm telling folks out on East 63rd Street, "Would you rather have a steady job at decent wages and hope for constant productivity gains? Or would you rather depend on the law to give you a boost that it cannot deliver and leave you without any kind of employment options?"

Reason: Does this have any implications for William Julius Wilson's theory that many of the problems in the inner city stem from the fact that middle-class blacks all moved out once housing segregation broke down?

Epstein: Part of it. What he does is document the greater polarization of the black community after the passage of civil rights legislation. Those who were doing very well do better, those who were doing very poorly do even worse.

Where I disagree—very vehemently—with Bill Wilson is on what kind of non–race-specific statutes or legislative measures you would want to change the overall situation. Bill is somebody who still believes that the New Deal charm has not yet lost its magic and you can find some massive government program for housing, or for education and so forth, which will do better for people than they would do for themselves. He's right to think that race-specific remedies will not have any desired effects. But he's wrong to think that comprehensive social tinkering or engineering will do any good either.

What you really ought to do is to reduce the total level of government burden, let people live where they choose, and it will turn out that, in general over time, the level of the housing stock will improve and the level of incomes will increase, just as they did in the period between 1946 and 1960–64. That was a relatively unregulated period in which you had the benefit of the post-war growth and of moderate levels of government interven-

tion. It wasn't a free market. Nobody pretends that it was. But there was far less going on than there was once the Great Society started up.

Reason: Do you think one of the reasons big employers moved out of the inner city was because of the civil rights laws?

Epstein: It's hard to say, because employers will follow their labor force. But there's certainly no reason to stay around in the inner city if it turns out that hiring workers under these circumstances will expose you to all sorts of penalties if you try to upgrade the work force and to fire people who turn out not to do well. But it would be a terrible mistake to assume that's the only thing that's going on.

A lot of it has to do with a powerful effect that no civil rights law can cure: The returns to education and employment are much greater now than they were 30 years ago. And this is a non–race-based effect. The gap in earnings between people who have quantitative skills and people who don't have quantitative skills is greater today than it was 40 years ago.

What one could say is that while you cannot measure for certain the level of harm that the civil rights statutes have done, still you cannot think of any benign outcomes or explanations that make it appear as though, on balance, they've been a net positive—particularly if you take into account the possibility of abuse and the administrative costs associated even with their beneficent intentions.

Reason: Do you think there's a new consensus emerging that recognizes the unintended consequences of civil rights legislation?

Epstein: My sense about the civil rights stuff is that the case for enforcement is less enthusiastic now than it was five or 10 years ago. And it's not because people are taking what I've said to heart. It's because they see all the individual cases and they try to look for any systemic improvement and they just have a sense that things are not better than they were 30 years ago. So they basically have come up with a very pragmatic conclusion: "Well, it may have been a great idea but it's not working as well as we hoped." It's not that they are opposed to it, but they are less enthusiastic.

There is relatively little discussion about civil rights as such. Of course, there's more anxiety about affirmative-action programs. That debate is much more closely contested than it has been before. I am of two minds with respect to affirmative action. I may not think it the best thing in the world with respect to internal policies of individual firms or institutions, but I'm extraordinarily reluctant for the government to come in and say it's just a stupid idea, now what we ought to do is to prohibit it from taking place.

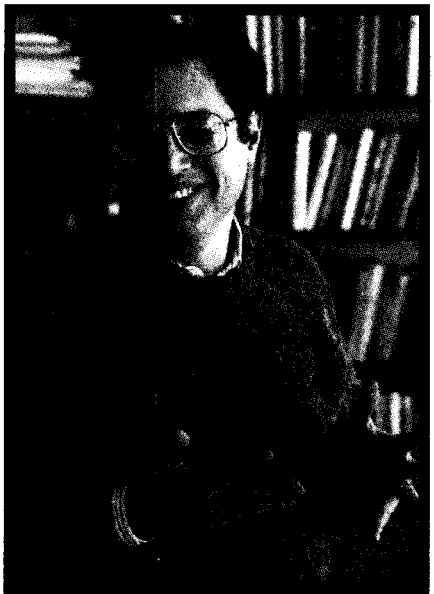
So my general libertarian instincts carry over to this question: If a private firm wants to have an affirmative-action program, then that's their business.

Reason: What about affirmative action with regards to schooling, where minority candidates whose grades and entrance exams may be below the average non-minority applicant are granted admission? What would be the appropriate approach, say, for a law school?

Epstein: If there were no EEOC and no recourse against private schools, you would still see affirmative action, but a little bit more tempered than you do today. There would still be moral claims saying that it would be intolerable to have a law school which is overly white. I think most schools would do some of it, but the budget constraints would be a bit tougher and the preferences for admission would be a bit smaller than they are now.

The current position on affirmative action is reinforced in two directions. It has a cadre of genuine supporters, who'd be in favor of it no matter what the law required. And then it has a large number of individuals who are willing to go along with it for fear that if they don't, they will enmesh their institution in an ugly Title VII suit.

There are many cases on the books, including the most famous of them—the Sears Roebuck case—where it turns out a firm a) has an affirmative-action program and b) is sued to the hilt with respect to its so-called discriminatory policies. It's very difficult under current law to find yourself a safe harbor against the enforcement of the statutes.



"I think that states ought to sell off their universities. Give them endowments and let them run. But if they do exist, it becomes very difficult to look them in the eye and say, 'You get some state funding so, even though you are relatively autonomous, you can't do anything that a private rival institution is able to do.'"

With public institutions, the difficulties are enormous. To some extent, I would like public institutions not to exist. I think that states ought to sell off their universities. Give them endowments and let them run. But if they do exist, it becomes very difficult to look them in the eye and say, "You get some state funding so, even though you are relatively autonomous, you can't do anything that a private rival institution is able to do. You've got many fewer degrees of latitude."

It's quite possible that public institutions, if pushed by legislative pressures, can go absolutely overboard on questions of affirmative action. I can't make any generalizations on the subject. In some states, the policies are relatively rooted in common sense and in other cases they may be absolutely tyrannical. Trying to figure out what the optimal policy is with respect to the public sector is something which should always be regarded as a daunting task, verging on impossibility.

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Cyberdemocracy

By Rick Henderson

Tip O'Neill, meet Alvin Toffler.

Richard and Mary Hartman access the Internet. Mr. Hartman is co-founder of America's first cyberspace political action committee.

RICHARD HARTMAN'S BUSiness card is informative and symbolic. It informs you that Hartman is co-founder of Reform Congress 94, described as "America's First CyberSpace PAC." It provides the political action committee's telephone number and fax number, along with Internet and CompuServe addresses. It also tells you that Hartman is one of the principals of the De-Foley-ate Project, which had one purpose: to help defeat Rep. Tom Foley (D-Wash.), who until the November election was speaker of the House of Representatives.

The card is symbolic because it doesn't list a physical address. Reform Congress 94 was a "virtual PAC" that used faxes and a computer bulletin-board service to get out its message rather than relying upon legions of volunteers to operate telephone banks and stuff envelopes. Hartman, a software engineer from Spokane, did rent an office, but he says that was "a waste of time and money. We went there twice." Along with one other person, Hartman and his wife Mary ran a political action committee from their home.

The Hartmans officially launched their effort in late August, a few weeks before the Washington primary. They hoped to raise $500,000, but fell a bit short: They received only about $26,000. But they faxed press releases to local radio talk shows, reminding the hosts that Foley had sued his own constituents in an attempt to overturn Washington's term-limit referendum and that he had voted to ban "assault weapons" in the crime bill. They set up an electronic BBS, to which Richard says hundreds of thousands of respondents dialed in.

And when participants in a September gun show in Florida wanted to distribute anti-Foley literature, Richard placed the literature on-line, including the software that would let the folks in Florida produce camera-ready posters. "We could have sent the information by Federal Express overnight," he says. Electronic media, however, "let us tailor the message to this precise audience instantly."

The Hartmans' circumstances were certainly unusual: They weren't political pros trying to run a national operation but rather ordinary citizens determined to defeat their local congressman. Because the local congressman was speaker of the House and a political lightning rod, it was certainly more likely that they would get attention (and contributions) from across the country. And they did know how to use the latest technologies, or as Richard says, "We had the right tools in our tool kit" to run a shoestring operation. But their unusual story demonstrates the unintended ways in which new technologies have let normal people gain access to the political process.

A new form of activism is shaking the political establishment, and it may crumble congressional and regulatory fiefdoms more thoroughly than last November's election. By using broadcast faxes, satellite television programs, radio talk shows, and electronic forums like those on CompuServe and the Internet, grassroots activists like the Hartmans can bypass traditional media outlets. The rather anarchic nature of computer culture suggests that the infomedia revolution will tend to erode the statist foundations of the political establishment. While this outbreak of cyberpolitics is not universally appreciated, there's little the Beltway powerbrokers can do to stop it.

THE EXPLOSION OF CYBERDEMOCRACY doesn't please everybody. "Some of the information technologies that so pervade Washington life have not only failed to cure our ills but actually seem to have made them worse," writes Robert Wright in the January 23 *Time*. "Intensely felt public opinion leads to the impulsive passage of dubious laws," though the only one Wright comes up with is the "three strikes, you're out" component of last year's crime bill.

In part, Wright's criticism resembles the gripes made by political bosses when sunshine laws opened government meetings to the public and made documents more accessible to average citizens. The explosion of information technologies has revoked the near monopoly on access to policy makers that high-priced lobbyists and prestige journalists once held. Quips American Conservative Union chairman David Keene, politicians "don't like to be lobbied by people who don't take them to play golf."

More substantively, Wright argues that

SPOKANE SPOKESMAN REVIEW

floods of e-mail messages, faxes, and calls from talk-show listeners drown out the deliberation that is necessary for sound policy making. "Politics *is* pandering in a hyperdemocracy," he writes.

Three lengthy, high-profile policy battles of the Clinton presidency belie Wright's assertion. Two major trade bills, the North American Free Trade Agreement and the General Agreement on Tariffs and Trade, each passed Congress though leaders of the president's party opposed them and populists left (Ralph Nader), right (Pat Buchanan), and center (Ross Perot) ginned up their infomedia networks to denounce them. In both cases, advocates of the trade deals had to defend them publicly, and on principle—a process that might not have taken place had the deals been negotiated entirely behind closed doors. And the Clinton administration made its most public case for NAFTA by circumventing traditional broadcast networks and having Vice President Al Gore debate Perot on a talk show—CNN's *Larry King Live*.

The failure of the president's Health Security Act again shows how information-age technologies can enhance deliberative debate. ClintonCare was formulated in a series of secret meetings by 500 experts hand-picked by the White House. In the first weeks after the Clinton plan was introduced, Republicans were on the defensive, seriously considering accommodation with the White House. Then-Senate minority leader Bob Dole and the Heritage Foundation were each pushing variations of universal health-care entitlements. Yet as details of the Clinton plan became available, they were dissected on talk shows and electronic bulletin boards, as well as on op-ed pages, in opinion magazines, and in the famous "Harry and Louise" series of television commercials. The Health Security Act, conceived in secrecy, could not survive when exposed to the light of public scrutiny.

SOME WASHINGTON PUNDITS HAVE ALSO expressed concerns about cyberdemocracy. *Washington Post* columnist David Broder worries that the "mobilization [of public opinion] has fallen into the hands of private interests, pursuing very specific and narrow agendas....In such struggles against private groups," Broder continues, "money will be important, not just in spreading the message but in hiring the people who know how to engineer quick responses." In the world of infomedia, *Demosclerosis* author Jonathan Rauch says, "narrowly focused groups are favored more than those [supporting] broad-reaching reforms. Ordinary people don't organize," he says. "Pros use this stuff."

Communications technologies turn individuals into a supportive, quick-response network. An advocacy group may have an advantage if it has a D.C. representative who can take a member of Congress to lunch; but that same legislator can't ignore hundreds of faxes and telephone messages from his or her own constituents.

But the Hartmans aren't political pros. And the backbone of the property-rights movement is the thousands of small landowners who attend zoning meetings, write their legislators, and communicate by fax. Communications technologies turn individuals into a supportive, quick-response network. An advocacy group may still have an advantage if it has a D.C. representative who can take a member of Congress to lunch; but that same legislator can't ignore hundreds of faxes and telephone messages from his or her own constituents.

"There are two prerequisites for a free society," says Jim Warren, one of the organizers of the first Computers, Freedom, and Privacy conference. "Citizens must have timely access to adequate information on which to base informed decisions. And they must have timely and economical access to the body politic. The [Internet] provides both of these. No longer do you have to buy newsprint by the ton or own a television license or a radio license in order to be able to conduct effective community outreach that is pervasive." With the Internet, he says, "You can instantly penetrate the full fabric of the community."

Without question, modern technologies make it easy for a few individuals to inexpensively form a single-interest organization. Unlike the large, successful lobbies of the past, such as the American Association of Retired Persons, which often sought to protect federal perks, many of the successful newcomers have had a different, more-sweeping agenda: Rein in government power one program at a time.

C-SPAN, radio talk shows, e-mail, and broadcast faxes have provided massive amounts of information to anyone who wants it. They have also created a new generation of political activists. "Fifty percent of our contributors listen to talk radio at least two hours a week," says the ACU's David Keene. "Ten years ago, our [typical] member would send us $15 and say, 'Do a good job.' Now, he says, 'Tell me what I can do.' "

An early indication of the speed and power of cyberdemocracy occurred last February, during the reauthorization of the Elementary and Secondary Education Act. A provision in the bill would have required every school district in the nation to certify all full-time teachers in the subjects they instruct. Home-schoolers—parents of the one million children who receive all their schooling at home—believed this requirement would force them to put their kids in more traditional schools. Communicating on the Internet, home-schoolers flooded Capitol Hill with hundreds of thousands of telephone calls and faxes. The onslaught of outrage forced the House to move the vote up by two weeks; by a vote of 424 to 1, it voted to strip the certification requirement from

the bill.

Other cyber-battles were fought in the 103rd Congress. A barrage of letters, faxes, and telephone calls from the members of wise-use and property-rights groups prevented the National Biological Survey from being considered for a vote and the Endangered Species Act, the Clean Water Act, and the Safe Drinking Water Act from being reauthorized by the 103rd Congress. (See "Bill Killers, August/September 1994.) And in September, when Congress threatened to force advocacy groups to disclose their donor lists to the Internal Revenue Service, hundreds of thousands of telephone calls and faxes from activists and trade-association members shut down the Capitol Hill switchboards and killed the lobbying bill.

GRASSROOTS ORGANIZATIONS HAVE shown they can work the phone lines and fax machines to clog the Capitol Hill switchboard. But these activities represent a minuscule sample of the ways individuals and groups use infomedia. For instance:

• The National Taxpayers Union has placed its two congressional rating guides, BillTally and VoteTally, on the CompuServe electronic service. Anyone with an IBM-compatible computer can download the programs and get a detailed voting record of any member of Congress.

The BillTally guide estimates whether individual pieces of legislation will increase or decrease federal spending. VoteTally ranks members of Congress according to the net amount of spending increases or cuts they proposed during an entire session of Congress. When NTU first started tracking for BillTally in 1991, over the first nine months, members of the 102nd Congress introduced 57 bills that would reduce spending. By the end of the 103rd Congress, 638 bills that would reduce spending were pending.

Until this information went on-line, NTU promoted its ratings through direct contacts with news outlets in every congressional district. Now with CompuServe, individuals can download the entire programs or simply call up an indi-

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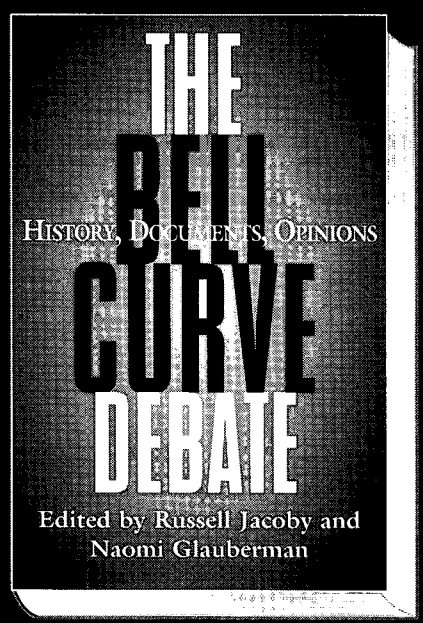

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TIMES BOOKS

vidual legislator's rating at any time. "Incentives matter in the legislative process," says NTU Vice President Paul Hewitt. "This cold, hard data has changed the incentives for legislators and empowered the general public to [demand] spending cuts."

• Americans for Tax Reform is another active, creative user of infomedia to promote its anti-tax, anti-regulation message. It sponsors regular conference calls with members of Congress, governors, and other elected officials to explain items on the legislative agenda. ATR faxes an invitation to listen to the call to its supporters, along with leaders of other grassroots organizations and political reporters. Over the past few months, for instance, by calling an 800 number, you could hear Reps. Tim Penny (D-Minn.) and John Kasich (R-Ohio) explain the Penny-Kasich budget-cutting plan or listen to school-choice activists from Arizona and New Jersey discuss proposals in their states.

ATR President Grover Norquist appears on a weekly National Empowerment Television program, informing viewers how to contact members of Congress or talk-show hosts about different bills. The group regularly faxes notices about national and state issues to local activists, talk-show hosts, and journalists. Commercial broadcast-fax services can send a one-page document to thousands of locations, each for about the cost of a first-class stamp. As ATR's Jim Lucier points out, batch-faxing information is not only faster than relying on the Postal Service; you don't have to recruit people to stuff envelopes and lick stamps.

And ATR has begun targeting op-eds and fax notices to community newspapers that would be too small to justify traditional mail campaigns. "These are the places that print coupons for the local supermarket and write about high-school football games and the prom," Lucier says. "It's an important audience to reach."

• Activists inside the computer community have worked to make government documents available at low cost on-line. Jim Warren worked with legislative staffers to place California's public records on the Internet rather than on a separate computer system that would have cost millions of dollars to construct and maintain and would have been costly for individuals to dial up.

And individuals can now reach the Library of Congress's "Thomas" program on the Internet and download the legislative language of any bill before Congress within seconds of its being filed. New Speaker Newt Gingrich believes "Thomas" will weaken Washington lobbyists and make it tougher to pass bills that benefit narrow interests. At a January 10 conference sponsored by the Progress & Freedom Foundation, Gingrich said disseminating information in "real time" will give everyone, not just well-paid lobbyists with research staffs, access to the same information. "There's no longer an advantage to being an insider," he said, "because everyone's an insider" who's willing to get the data. ATR's Lucier says "'Thomas' lets anyone play 'Find the Pork' with their home computers."

Before "Thomas" was up and running, unless you could walk over to Capitol Hill (or pay someone to do it), it would take days to get the text of bills pending in Congress by mail. And unless you had solid contacts on Capitol Hill, forget about quickly obtaining copies of committee reports, the staff-prepared briefs that outline the projected costs and regulatory impacts of pending bills.

ORGANIZATIONS ACROSS THE POLITICAL spectrum form "working groups" to respond to legislation affecting areas as disparate as immigration, criminal sentencing, and gun laws. A few hours after a meeting ends, thousands of activists can learn by fax or e-mail what's happening in Washington and what they can do to assist in legislative battles.

And they have an impact. By raising a ruckus on the Internet, for instance, civil-liberties groups have derailed proposals to make digital telephone communications easier for governments to wiretap. They have also caused an indefinite delay in the introduction of the Clipper Chip encryption device. Says Jim Warren, "The Net is a potent tool for enhancing citizen control over state and federal legislative activity."

But Rauch argues that technologies aren't the problem; lobbies are. He admits that the grassroots infomedia groups have been most effective in stopping intrusive legislation. But he wonders if new "veto" groups won't spring up that stop laws that roll back existing entitlements and regulations.

Such groups may emerge. Indeed, greens use electronic communications (the ECO-NET news service, for instance) extensively. But their main thrust has been extending regulation, which has recently become a legislative nonstarter. And as Paul Hewitt of the NTU points out, the latest technologies are in the hand of younger people who are more suspicious of government entitlements than their parents. Warren agrees. "On the Net," he says, "Generation X has an equal voice to the AARP."

The coalitions that fought the Clipper Chip, the 1993 tax hikes, ClintonCare, teacher certification, and the lobbying bill were part of what ATR's Lucier calls "the leave us alone coalition." These technologies provide fast and flexible responses to government attempts to micromanage peoples' lives. Working on many fronts, individuals and groups can chip away at the centers of power in Washington.

Richard Hartman thought his family's life would return to normal after the election. Now political consultants and grassroots activists across the country want to hear how they ran an effective political-action committee out of a couple of rooms. He's planning to sponsor a seminar in Spokane in late spring or early summer to explain how they did it. "We had no long-range agenda," he says. "Everything we did was focused on getting rid of Mr. Foley." Now that Foley has become a D.C. lobbyist, the Hartmans may be able to show other activists how to give their local legislators early retirements. ◆

Rick Henderson (DCReason@aol.com) is Washington editor of REASON.

Universal Disservice

By Steve Gibson

The hazards of fretting about info haves and have-nots

How do you plan to utilize the information superhighway ?..
Take my sign and stand next to it...
NO PARKING
WILL WORK FOR FOOD
Mike Luckovich

GUTENBERG'S INVENTION OF the printing press cut the cost of copying information one thousand-fold, ultimately unleashing the scientific progress that created the Industrial Age and culminated some 400 years later as man landed on the moon. Since the invention of the microprocessor in 1971, by contrast, the cost of copying coded information already has dropped 10 million-fold.

If the looming changes brought forth from a technological innovation four orders of magnitude more powerful than the printing press leave you a bit confused, don't worry. Al Gore has the answer: the National Information Infrastructure, or NII. The administration's "Agenda for Action" begins with the promise of "a device that combine[s] a telephone, a TV, a camcorder, and a personal computer" that would bring "the best schools...vast resources of art, literature and science... health care...fulfilling employment...the latest movies...government benefits" and more. In sum, "whatever you need."

By promising so much, Gore et al. create an expectation that quickly tilts toward entitlement. If, as they suggest, the government must guarantee universal access to essential services, then who but the government can determine what constitutes "access," and what is "essential"? National Public Radio head Dell Lewis was among those named to advise the administration on what type of chicken belongs in every pot.

A major justification for government "guidance" in this $400 billion investment is fairness. Who among us, indeed, would want a society of "information haves and have-nots?" But the call for universal service is a red herring. It masks a fundamental mistrust of a process that will deeply reshape society and yet is almost entirely beyond government control. A process that is chaotic and self-organizing, utterly without a central plan. In other words, a market.

THAT THIS SHOULD CAUSE SOME COGNItive dissonance among the social engineering crowd is no surprise. David S. Bennahum, author of a forthcoming book on cyberspace, notes in *The New York Times* that the Internet was created "mostly by accident" and worries about what kind of cyberspace we will get "if we surrender it to the vagaries of the market." *The New Republic* even goes so far as to castigate *Wired*, the magazine of the Information Age cognoscenti, for its "taint of contempt for the poor" and its "willful rootlessness and hyper-individualism" which "do little to minimize the class polarization and segregation that have always plagued the United States."

With the title "Anarchy, Chaos on the Internet Must End," an op-ed in the *San Francisco Chronicle* perhaps gets to the heart of the matter. Martha Siegel, author of *How to Make a Fortune on the Information Superhighway*, is appalled, rather than awed, by "an international computer web tying together about 30 million people [yet] governed by no one." She can scarcely imagine "the most powerful communication medium ever invented...left to the equivalent of mob rule." To her, the "need for firm direction is all too obvious." Firm direction, of course, means "the guiding hand" of the FCC.

That's not to say that there is not a very real danger of some being left behind. A 19th-century peasant, newly arrived in the big city, faced a skill and knowledge gap much narrower than will a 21st-century worker ignorant of the ways of the Infoweb. The very nature of the emerging information economy differs fundamentally from its industrial predecessor. While uncertainty comes hand in hand with rapid change, the ongoing universal-service debate misses four important truths.

First, Siegel is right. The Internet, the early progenitor of a 21st-century global Infoweb, is not governed by anyone. It is truly a self-organizing phenomenon, defined mainly by the simple rules, or protocols, which allow information to pass from one computer to another. Moreover, sometime soon if not already, nobody really knows for sure, the number of foreign Internet connections will outstrip those in the United States, making any attempts at national control futile.

Second, the "Information Superhighway" is anything but a highway. The paucity of our metaphor reflects the Machine Age mindset's inability to grasp an emerging, evolving, chaotic phenomenon. Unlike a planned, mapped, and relatively static highway, 1995 info-reality is a not-quite-seamless, organic web of Internet nodes, cellular modems, fax machines, CNN, GPU-equipped delivery trucks, and 1,001 other microprocessor-enabled innovations. Together, they make manipulating, moving, and storing information

MIKE LUCKOVICH

cheap, time and distance immaterial, and hierarchy the quick route to organizational failure.

Third, information is fundamentally different from matter. If I mail my dad a copy of this article, I don't have that copy anymore. But if I e-mail him—and everyone else I know—I retain my copy. And my friends could do the same. Leaving the issue of intellectual property aside, we must remember that information is not material and carefully question statements that imply that it is. Unlike money, for example, information I have is not necessarily information that you have not. Have versus have-not, or zero-sum thinking, belongs to the Machine Age, not the Information Age.

Fourth, the idea of "convergence"—televisions, computers, and phones all merging into one, or vice versa—both will and will not occur. While increasing bandwidth will allow once-separate technologies to overlap, there's no reason to expect one answer. Rather, we should anticipate many answers, as entrepreneurs create and fill niches based on consumer needs. Banks and bakeries do not have the same information infrastructure needs. Nor do all consumers. Bell Atlantic CEO Ray Smith identifies five different technologies that his company will (or might) use just to compete with cable companies for delivering video signals. In other words, there is no single twisted copper wire with matching black rotary phone that will be installed. Fortunately, as Peter Huber of the Manhattan Institute puts it, "the markets have already grasped this, even if the metaphor makers haven't." Nor have the policy makers, who rely on convergence to make their one-black-box-fits-all vision plausible.

THAT HAVING BEEN SAID, HOW DO WE GET from the industrial here to the information there? Imagine that in 1895, some 13 years before the Model T, Al Gore's great-grandfather had correctly identified the potential importance of the new "horseless carriage" to future employment, and led the government push to ensure that we did not become a nation of "motorized transportation haves and have-nots." History provides an answer to this hypothetical question. Instead of the dizzying array of car classes that compose the U.S. automobile industry—essentially related, but separate, markets—we would be selecting among shades of black for our new Trabant.

By contrast, the process of technological innovation in a market environment is well documented. From jet engines to fiber optics, performance-conscious, price-insensitive consumers pay a premium for innovations, which drives unit production costs down the learning curve and brings the newer, better technology into ever lower price ranges. That's why anti-lock brakes are found in Chevys now, not just Cadillacs. That's why burgeoning cellular service, a luxury everywhere but L.A., enabled cellular service to arrive in certain rural homes not economically served by land lines, contributing to an increase in the percentage of homes with phones since the explicit cross-subsidies were phased out early this decade.

The danger lies in deciding ahead of time that we all need anti-lock brakes in our car, or a videophone, or a certain set-top box on our TV, or any other single answer, because some technologies don't make the grade. The recent Japanese debacle with HDTV shows how trying to guide, much less predict, technological innovation can leave consumers stuck with white elephant solutions.

When consumers are ready, new technology can, and does, spread with startling rapidity all by itself. Although the basic concept of facsimile machines had been around for decades, it took a microprocessor upgrade and consumer desire to bring "fax" into our vocabulary. From just 300,000 units in 1986, the installed facsimile base exploded to 10.7 million just six years later. Similar exponential growth patterns characterize the ongoing information revolution. According to Vinton Cerf, president of the Internet Society, if current growth rates continued, sometime early in the next century everyone in the world would have an Internet address.

Investors and early adopters pay for the innovations that fail, as well as the successful ones like fax. They should continue to do so, because progress comes from innovations unknowable in the time frame of Gore's vision: Apple Computer, Microsoft, and the PC itself have all existed for less than the estimated 20 years it would take to bring fiber-optic cable to every home in the United States. Undoubtedly, there is more than one goateed cyberpunk tinkering in his garage right now, looking for a better way. As long as there are geeks with a dollar to spend today on what will cost 50 cents tomorrow, just to be the first in their Usenet group to have it, new ideas will continue to germinate. Once government committees have the power to decide what society will need, the process of innovation will die.

TO THE LEVEL-PLAYING-FIELD CROWD, letting some people have something all of us don't just isn't fair. As if free home access to Nexis and Dialog would miraculously provide jobs for the poor, these folks worry that "electronic redlining" will keep such high-priced services only in the offices of law firms, investment banks, and other rich users, totally ignoring the rapid erosion of information services prices. Nothing short of mandating fiber-optic lines to every home will do. Even if a planned solution were technologically feasible, would this zero-sum, slice-of-the-information-pie policy work?

Not a chance, says Jeff Eisenach, president of the Progress & Freedom Foundation, a Washington think tank. "The problem in America today is not information have-nots, it's information want-nots," he notes. "Before we start putting a computer in every home, we have to create a culture in which people want the information a computer would provide."

He may be right. A television, today's prime source of information and entertainment, can be found in upwards of 99 percent of American homes, higher even than the 93 percent of homes with a phone. Without a hint of government subsidy—let alone a domestic producer—TV reaches more homes than telephones, de-

spite six decades of sweeping universal telephone service policy courtesy of the Communications Act of 1934. Today, as computer price-to-performance ratios plunge, a used computer and modem can be had for prices equal to or less than a TV, with basic access to today's online world about $9.00 per month. And, like virtually everything else in the high-tech arena, those prices are falling.

If "universal service" meant that buyers and sellers would be ensured access to each other (as with today's access to a variety of long-distance phone service providers) and that, perhaps, we would ask how best to get even one modem into every school (even without asking why they don't have them already), then Washington would have made the first small steps in the right direction.

It's a positive sign that Vice President Gore's rhetoric seems to have evolved in its own right, away from the class-conscious, entitlement-creating "haves and have-nots" of early 1994 to at least the potential for deep reform. In January, Gore suggested that what's needed is "the courage to throw out the regulated monopoly model that we've used for more than 60 years and instead create a truly competitive marketplace." But the rhetorical rubber has yet to meet the legislative road, and the potential for serious mischief, such as domestic-content requirements, remains.

More important, as long as the debate echoes with "on-ramps to the Information Superhighway" and other Machine Age images, Democrats and Republicans alike remain conceptually limited to policies that, at best, will produce a horseless carriage. Lacking an appropriate Information Age metaphor—economy as ecosystem—policy prescriptions inevitably ring with class consciousness and zero-sum thinking. Until the political mindset matches the organic reality of the Infoweb, the best we can hope for is a short waitlist for our e-Trabant.

Steve Gibson (sgibson@bionomics.org) is executive director of The Bionomics Institute in San Francisco.

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Jointed Goatgrass or Your Life

By Brian Doherty

How much of your tax burden do government programs cost?

"PUBLIC RADIO COSTS AMERICAN taxpayers just 29 cents a year," Los Angeles radio station KCRW recently announced while defending their continuing public subsidy in the wake of threats to eliminate it from the new, Gingrichized Congress.

Arguments like that are inescapable whenever threatened parasites defend their picayune share of the federal gift grab bag: "At piddleydink million a year, the tribute rock band support program on which I depend only represents one-scintillionth of the federal budget, and only costs each taxpayer 2 cents a day. Most people drop that kind of money on the floor without a thought every day...."

But money is fungible. A per-capita division of the costs of some barely-worth-worrying-about nonsensical program isn't the only way to think about your tax burden. It is equally legitimate—and more infuriating—to figure that *every single cent of what you pay* is going to your particular favorite abuse of public funds.

What you'll find, unless fortune has smiled upon you indeed, is that your entire year's worth of taxes—in some cases your entire *lifetime* of taxes—barely accounts for a percentage point of a year's worth of such programs as, say, the National Endowment for the Arts. However much it might be per day per capita, it's still $183.9 million a year. (All budget figures in this article are for fiscal 1995.) Which means the entire federal income tax burden of 267 millionaires is going to pay for it—and nothing but. Soak the rich, indeed.

It's one thing to think about working one month and two days of the year (based on the Tax Foundation's 1994 calculation of Tax Freedom Day) to pay for all the government your federal income tax can buy—which is far less than half of all your *total* taxes, but still the most noticeable. It's quite another to think about working that same time to pay for 1/1000th of the yearly budget of a federal giveaway to educate native Hawaiians ($12 million).

Number of Taxpayers Needed to Pay for Various Government Programs

	Adjusted Gross Income in Thousands					
	$25–30 ($2,479)	$30–40 ($3,569)	$40–50 ($4,851)	$50–75 ($7,521)	$75–100 ($12,970)	$1,000+ ($688,130)*
Jointed Goatgrass Research, $296,000	119	83	61	39	23	.43
D.C. Education Licensure Commission, $462,000	186	129	95	61	36	.67
Amtrak Rider Survey, $1.5 million	605	420	309	199	116	2
Rice Germplasm Center, $4.75 million	1,916	1,330	979	632	366	7
Education for Native Hawaiians, $12 million	4,841	3,362	2,474	1,596	925	17
Global Warming Initiative, $55 million	22,186	15,410	11,338	7,313	4,241	80
Intelligent Vehicle Highway Systems, $114.5 million	46,188	32,082	23,603	15,224	8,828	166
National Endowment for the Arts, $183.9 million	74,183	51,527	37,910	24,452	14,179	267
Corporation for Public Broadcasting, $285.6 million	115,208	80,022	58,874	37,974	22,020	415

*average federal income tax liability

Source for tax liabilities: IRS *Statistics of Income Bulletin*, Summer 1994.

THE CHART SHOWS HOW MANY PEOPLE IN a given income range it takes to pay, out of their average federal income tax burden, for one year's worth of a motley collection of the mutts of the federal budget. (The figures are based on 1992 income tax returns, the most recent year for which data are available, showing an average of the actual federal income tax as paid by those with adjusted gross incomes within the given ranges.)

These are mostly mangy, pathetic little programs, not noticed at all by most, hated by some of the few who do, but dear indeed to the hearts of those whom they benefit. These programs are so minuscule by Washington standards that acting agitated about cutting them would garner raised eyebrows and a "get a load of this naif" stare from a seasoned Washingtonian. "Why, these programs are so insignificant they're not even worth looking at...."

And yet these programs—barely noticeable, and barely worth noticing, as their beneficiaries would no doubt insist—can be weighty indeed when looked at as percentages of an individual's total federal income tax burden.

We'll start small: Consider jointed-goatgrass research, a $296,000 special research grant under the Department of Agriculture. Jointed goatgrass is a pesky weed with a similar growing cycle to winter wheat, and herbicides that kill it also kill the wheat. If not eliminated, it ends up mixed in with the wheat flour, making the flour less palatable. This problem for winter wheat farmers becomes a serious problem for 119 unlucky income earners in the $25,000–30,000 income range, who have every cent of their federal income tax burden go to paying for it.

A relative bargain at $462,000 is the Education Licensure Commission in Washington, D.C., which exists to "protect the residents of the District of Columbia from substandard educational programs at the postsecondary level and protect employers from fraudulent educational credentials." (Like a D.C. high-school diploma, for instance.) You might be well-educated yourself, earning in the $50,000–75,000 range, but you and 60 of your hapless fellow income earners are

still throwing all of your federal income tax away on this program.

And can you afford *not* to buy, at $1.5 million, a survey of Boston-to-New York Amtrak riders? This survey is to ensure that ridership guesses made by Amtrak in 1986 to justify spending money on "high-speed rail" are still accurate. You can't afford to pay for all of it, to be sure. But if you want to avoid eventual imprisonment, you can't afford not to purchase the 1/420th of it the taxman demands if you're earning in the $30,000–40,000 range.

We're all just a drop in the bucket in the $4.75 million to be spent for the Rice Germplasm Center in Stuttgart, Arkansas —dedicated to housing and cataloging the feds' prize collection of rice genetic material, which has now outgrown its old cigar box. But they couldn't do what they do without you (and 978 people like you, if your taxable earnings are in the $40,000–50,000 range).

Even if you think there's no strong evidence that global warming is a serious threat, you've got money down on the table betting you're wrong—$55 million to an international Global Warming Initiative. In the $75,000–100,000 range, 4,241 of you are working all through January plus a couple of days to pay for this program.

To Washington, as these figures show, any one of our lives is insignificantly small, barely worth considering. But it is the time of your life that they are taking from you, in larger and larger quantities, to spend on the above silliness, plus other obscure private industry pork such as Intelligent Vehicle Highway Systems ($114.5 million).

Even if you were as well off as the companies that benefit from things like Intelligent Vehicle Highway Systems, you can't buy that time back. Stop looking at the federal machine in a way that makes it look small and insignificant, and start thinking seriously about what they are doing with the time of your life—the big things *and* the little things. ®

Brian Doherty is assistant editor of REASON.

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Freak Parade

By Charles Oliver

Daytime talk shows are a contemporary carnival.

BEARDED LADIES. SIAMESE TWINS. Men and women who weigh more than 300 pounds each. Tattooed men. These are just a few of the guests to grace the stages of daytime talk shows in recent months. If those examples remind you of a carnival sideshow, there's a reason.

In the 19th century and for the first few decades of this century, carnivals criss-crossed the United States, providing entertainment to people in small towns. Carnivals catered to the dark side of man's need for spectacle by allowing people to escape temporarily from their dull everyday lives into a world that was dark, sleazy, and seemingly dangerous. Of course, the danger wasn't real, and the ultimate lure of the carnival was that you could safely return from its world to your everyday life.

Television and regional amusement parks took their toll on the carnival. Today, the few carnivals in existence are generally sad collections of rickety rides and rigged games. But man's need for dark spectacle hasn't gone away, and a new generation of entrepreneurs has found a way to allow people to experience the vicarious thrill of the dark, the sleazy, and the tawdry—all without leaving the safety of their homes.

The gateways to this dark world are daytime talk shows. Phil Donahue created the mold for this genre, and Oprah Winfrey carried it to perhaps its greatest success. Both their shows are essentially women's magazines on the air, alternating celebrity profiles, services-oriented features, discussion of political issues, and more exploitative episodes. Both mix the tawdry with the serious. Donahue was the man who gave us daytime debates between presidential candidates, and he was also the man who wore a skirt on a show devoted to cross dressing.

However, a new generation of hosts has emerged that trades almost exclusively in the sleaze their audiences demand: Geraldo, Montel, Ricki, Jerry. Their names may not be familiar to you, but they have millions of viewers. *Oprah* alone is watched by 7 million households each day. Each has managed to recreate the carnival in a contemporary setting.

ONE OF THE MAIN ATTRACTIONS OF THE old carnivals were the "hoochie coochie" dancers. Men would eagerly wait in line, enticed by the talker's promise that these women would "take it off, roll it up, and throw it right at you." This was the origin of modern striptease. Today, the heirs of Little Egypt are a staple on daytime television. In fact, they are so common that producers really have to try to come up with new angles. Male strippers, female strippers, old strippers, grossly overweight strippers, amateur strippers—these are just a few of the variations that I saw on daytime talk shows in just one four-week period. Of course, these people didn't just talk about their profession; they inevitably demonstrated it. While the television viewer could see the naughty bits only in digitized distortions, the live audiences for these shows were treated to an eyeful.

However, most of the strippers on these shows are attractive young women. Given that the audience for daytime talk is also women, this seems like a strange choice of guests. I can only assume that at least some of the women who watch these shows are intrigued by the profession and wonder what it would be like to be a stripper. By presenting these women strippers—indeed, by actually taking their cameras into clubs for performances—

TV talk-show host Ricki Lake: Bringing the carnival sideshow to America's living rooms

talk shows give those women viewers the chance to live out their fantasies vicariously without risking any of the dangers involved. Based upon the comments offered, female audience members generally seem to sympathize with the strippers who appear on these shows, usually defending them against those brought on to attack the profession.

Of course, at times the subject of stripping is simply an excuse for these shows to engage in emotional voyeurism. A perfect example was an episode of *Jerry Springer* dealing with strippers and family members who disapproved of how they earned their money. Naturally, the strippers couldn't just talk to their parents and siblings; they had to demonstrate their art to them. So while the assembled families and the studio audience watched, the girls stripped naked.

On one side of a split television screen, the home audience saw a lovely young girl strip down to her distorted birthday suit. On the other side, her family, some of them crying, averted their eyes and tried to ignore the hooting and catcalls of the audience.

It was tacky; it was sleazy. It was

the perfect daytime moment. Whoever thought of it is a veritable P. T. Barnum of the airwaves. At once, this sordid mess provides the viewer with the voyeuristic thrill of seeing a family conflict that one really shouldn't observe, the vicarious thrill of stripping before an audience, and, ultimately, the confirmation that a dull, "normal" lifestyle is superior to that of the women on the show.

AN IMPORTANT PART OF CARNIVALS WAS the freak show, an assortment of real and contrived physical oddities: pinheads, fat people, bearded ladies. While the carnival talkers would try to entice people into the sideshow tents with come-ons about the scientific oddities inside, the real lure of these attractions wasn't intellectual curiosity. It was terror and pity. The customer could observe these people and think to himself that no matter how bad his life seemed at times, it could be much, much worse.

Daytime talk shows have their own version of the freak show. Indeed, on her now-defunct show, Joan Rivers had actual sideshow freaks. These were politically correct "made" freaks (people who had purposefully altered their bodies), not natural ones. The guest who drew the biggest reaction from the audience was a man who lifted heavy weights attached to earrings that pierced various parts of his body. (I've actually seen this guy perform, and I can say that the audience didn't see his most impressive piece of lifting. But there was no way that it could have been shown on television, at least not without some serious digitizing of the screen.)

More often, talk shows will feature people with physical conditions similar to those who were attractions in sideshows. I've seen various shows do episodes on women with facial hair, and the lives of the very large are always a popular topic. One episode of *Jerry Springer* featured greeting card models who weigh more than 300 pounds. In typical fashion these women were not dressed as they presumably would be in everyday life, but in revealing lingerie. So much the better for gawking, I guess.

Again, the host will set up one of these shows with some remarks about understanding these people, and to their credit, many of the guests on these programs do try to maintain their dignity. The greeting card models seemed a happy, boisterous lot of people. But more often guests are asked to tell tales of discrimination and broken hearts. It's easy to conclude that they were invited on the show so that the audience could feel sorry for them and feel superior to them.

And speaking of feeling superior, how could anyone help but laugh at and feel better than the endless parade of squabbling friends and relatives who pass through these shows? Judging from the looks of guests on some of these shows,

At once, this sordid mess provides the viewer with the voyeuristic thrill of seeing a family conflict that one really shouldn't observe, the vicarious thrill of stripping before an audience, and the confirmation that a dull, "normal" lifestyle is superior.

you'd think that the producers comb every trailer park and housing project in the nation looking for them. In fact, most are solicited through telephone numbers given during the show: "Are you a white transsexual stripper whose family disapproves of your Latino boyfriend? Call 1-800-IMA FREK."

The guests then are invited on the show, where they battle it out for the amusement of the audience. A typical example was a show hosted by Ricki Lake on the topic of promiscuity. Ricki began by introducing Shannon, a girl who claimed her best friend Keisha sleeps around too much. Amid much whooping from the audience, Shannon detailed her friend's rather colorful sex life: "It ain't

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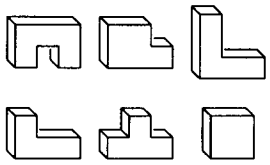

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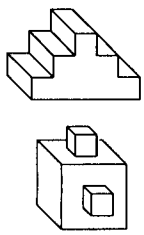

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like she getting paid."

Then Keisha came out and accused Shannon of being the one who sleeps around too much. They spent an entire segment arguing. After the break Ricki introduces a mutual friend of the two and asked the question everyone in the audience now wanted to know: "Which one is the real slut?" A dramatic pause. The emphatic answer: "Both of them." The audience erupts.

CONFLICT IS A KEY ELEMENT ON THE NEW breed of talk shows. Physical fights seem to break out on Ricki Lake's show more frequently than at hockey games.

Judging from the looks of guests on some of these shows, you'd think that the producers comb every trailer park and housing project in the nation looking for them.

These conflicts are not always mere arguments between friends or family members. Often, there are clear-cut good guys whom the audience is supposed to cheer and bad guys whom the audience boos. These episodes resemble the low-brow morality plays of professional wrestling.

Pro wrestling, in fact, had its origins in the carnival. Sometimes the resemblance to pro wrestling is quite pronounced. Daytime talk shows have a fascination with the Ku Klux Klan. It seems a week doesn't go by without one show bringing on members of the Klan to discuss their views on race relations, welfare, abortion, or child rearing. Usually there'll be representatives from some civil rights organization present to offer an opposing view.

The Klansmen look every inch the pro wrestling "heel." They are invariably overweight and have poor skin and a bad haircut. Watching them sitting there in their Klan robes, shouting racial slurs at their opponents as the audience curses them, I always expect these people to pull out a set of brass knuckles and clobber the "babyface" while the host has his back turned.

More often, though, the villains on talk shows are a little more subtle. The audience seems to value family quite a bit because the most common types of villains on these shows are people who pose a threat to the family: child-deserting wives, cheating husbands, and abusive parents.

One typical show was an episode of *Jenny Jones* where women who date only married men faced off with women whose husbands had left them for other women. The women who dated married men certainly made no attempt to win the audience over. They came in dressed in short skirts or low-cut dresses. They preened; they strutted; they insulted the other guests and the audience members; they bragged about their sexual prowess. "Nature Boy" Buddy Rogers himself could not have worked the crowd better.

Why do such people even show up for these shows? It can't be for the money, since guests receive no more than a plane ticket and a night in a nice hotel. After watching countless shows, I've come to the conclusion that these people really think there is nothing wrong with what they do, and they usually seem quite surprised that the audience isn't on their side.

Is the public's appetite for this sleaze unlimited? Probably not. After all, the carnival came around but once a year. With close to two dozen daytime talk shows competing for viewers, people are bound to grow jaded. Last year, Oprah Winfrey, who already had one of the less sleazy shows, began a policy of toning down the tawdry elements. Even her sensational admission to using crack cocaine during the 1980s came in the middle of an "inspirational" program on recovering addicts. The show, which was already the top-rated daytime program, saw its ratings climb. But for those with a taste for the dark side of life, there'll always be a Ricki Lake or a Gordon Elliott.

Contributing Editor Charles Oliver writes for Investor's Business Daily.

Civility Wars

By Paul A. Rahe

Democracy on Trial, by Jean Bethke Elshtain, New York: Basic Books, 153 pages, $20.00

Jean Bethke Elshtain: "Government cannot substitute for concrete moral obligations."

SOME YEARS AGO, WHEN A FRIEND reached his 40th birthday, I sent him a T-shirt emblazoned with the legend "Aging McGovern Voters for Reagan." Were I closely acquainted with the author of this slender volume, I would be inclined to draw her attention to the fact that a woman who once prided herself on her hatred for Nixon is now sounding some themes reminiscent of Newt Gingrich. I wonder, however, whether she would be amused.

Jean Bethke Elshtain, the Laura Spelman Rockefeller Professor of Ethics at the University of Chicago, is an academic left-liberal with impeccable feminist credentials. The five lectures that make up her latest publication were delivered at Massey College in 1993, broadcast on CBC Radio in Canada, and revised for publication during an extended sojourn at Harvard University. Although her book is written in a conversational tone and is accessible to anyone willing to plunk down $20, it is in fact directed at a particular audience—at academic left-liberals and their fellow travelers, especially at those inclined to think righteous thoughts when they hear the chant, "Race, Class, and Gender."

Elshtain is not a convert preaching to the converted. Nor does she make strenuous efforts to establish her bona fides with those to whom her remarks are addressed. Her lectures are, in fact, noteworthy for the near absence of cheap shots at those on the right. For the most part, she reserves her criticism for members of her own tribe. But Elshtain isn't a turncoat—a liberal turned neoconservative—at least not yet. She associates herself with Amitai Etzioni, Michael Walzer, William Galston, and others on the "communitarian" left, and there is every reason to suppose that she cheered William Jefferson Clinton's latest State of the Union address.

But like neoconservatives of a slightly older generation, she is a liberal who has clearly been mugged by reality. In her preface, she tells us that she has "joined the ranks of the nervous," and her book, graced with a title that, as one senior colleague observed, has "a very 1940s ring to it," is an attempt to explain why.

To begin with, Elshtain is a firm friend to the family. Her study is dedicated to the memory of her father; in its preface, she draws attention to the fact that she is herself now a grandmother. She worries that "the America" which her granddaughter "will discover a mere fifteen or twenty years from now" will not possess a political "culture worthy of endorsement and engagement." Above all else, she fears what I will call the postmodern mentality, which is marked by what she calls "the pernicious corrosion of resentment."

As she puts it, "The language of opposition now appears as a cascading series of manifestos that tell us we cannot live together; we cannot work together; we are not in this together; we are not Americans who have something in common, but racial, ethnic, gender, or sexually identified clans who demand to be 'recognized' only or exclusively as 'different.' Think about how odd this is on the face of it: I require that *you* recognize that *we* have nothing in common with one another. This demand is rapidly becoming a shared civic zaniness that threatens to implode our culture. We are in danger of losing democratic civil society. It is that simple and that dangerous, springing, as it does, not from a generous openness to sharp disagreement—democratic feistiness—but from a cynical and resentful closing off of others."

Pluralism she embraces: The "aim" of her book is, as she puts it, "to reach disagreement," and she is perfectly prepared to honor and even celebrate "our distinctions, as peoples of a particular heritage and individuals of particular gifts." What worries her is multiculturalism, which she defines as "the current construction of 'difference' as a form of group homogeneity that brooks no disagreement or distinction *within* and can maintain itself only as a redoubt *against* threatening 'enemies' from without."

One consequence of multiculturalism's hegemony is that the world of the university is now balkanized, and scholars "whose tacit Hippocratic oath commits them to thoroughness and fairness in inquiry" no longer "bother to hide" the fact that they think in quasi-inquisitorial terms of "apostasy" and heresy while searching "for guidance on the interdiction of a text."

IF ELSHTAIN HAD FOLLOWED UP ON HER eloquent introductory remarks by providing her readers with a sustained analysis of our postmodern predicament, this would have been an important book. Unfortunately, however, her lectures are disjointed and episodic, and her book is slender in more than one way. Where one looks for a coherent, focused argument, one finds instead an extended commentary on a pastiche of quotations drawn from the great and the good: from luminaries such as Dietrich Bonhoeffer, Vac-

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lav Havel, Milan Kundera, Pope John Paul II, Hannah Arendt, and many a lesser light. What no doubt worked on stage and even on the radio is far less effective when presented on the printed page.

The thrust of Elshtain's remarks is generally sensible. Early on, in the first lecture, she cites E. J. Dionne's *Why Americans Hate Politics* and draws attention to the incoherence marking both liberal and conservative thinking with regard to markets and morals. Liberals, she notes, try "to tame the logic of the market in economic life" and then "celebrate a nearly untrammeled laissez-faire in cultural and sexual life"; their conservative opponents think it possible to introduce "constraints and controls in the cultural and sexual sphere but embrace a nearly unconstrained market." She then draws attention to academic studies of the manner in which preferential hiring programs have stoked racial resentment, and she notes the tendency for federal programs to create "a 'client-compliance culture' that is much at odds with the possibilities for adult citizenship." Again and again, she emphasizes what is obvious to most Americans but incomprehensible to those within the academic counterculture: that there is a close correlation between poverty and juvenile delinquency on the one hand and being the offspring of unmarried parents who failed to complete high school and had a first child before reaching the age of 20 on the other.

In the same lecture, Elshtain quite rightly traces many of our difficulties to the substitution of a notion of rights as entitlements for the older, liberal understanding of rights as immunities. And in attacking "the logic of statism," she sensibly observes that "government cannot substitute for concrete moral obligations."

She sounds an elegiac note when she considers "the loneliness of the aged, the apathy of the young, the withering away of churches and communal organizations, the disentangling of family ties, and the loss of family rituals and rhythms." Although she stops short of simply blaming statism for these phenomena, she warns that "a bureaucratic, top-heavy state that numbers among its tasks defining populations by their 'needs' and targeting them for various policies based on assumptions about such needs, really cannot help moving in the direction of a 'social engineering' that exists in tension with democratic freedom, civic sociality, and individual liberty."

In similar fashion, Elshtain attacks the Violence Against Women Act, which incorporates "gender motivation" into the law and "presumes to see in rape—a crime of violence—the paradigmatic, indeed normative, expression of male dominance." It is, she observes, a "distressing spectacle" to find "an assault on civil liberties, coupled with a perfervid ideology of victimization." Four paragraphs thereafter, she launches an attack on court intervention in "wedge issues," such as the question of abortion, arguing that "the juridical model of politics" freezes out "citizen debate" and deepens "a politics of resentment." And she concludes her lecture with a call for "a new social covenant," the meaning of which, in subsequent lectures, she fails to spell out.

A bureaucratic state that defines populations by their "needs" and targets them for policies based on assumptions about such needs, cannot help moving in the direction of a "social engineering."

Elshtain's failure in this regard is a shame—for while it is difficult to find the thread that holds the individual pieces of her first lecture together, there is a logic evident in some of what she says. In the manner of the Anti-Federalists and Alexis de Tocqueville, she regards centralization as suspect, and she wants to reinvigorate families, churches, schools, and local governments. But she does not do a very good job of relating these concerns to her critique of the postmodern mentality. And when commenting on the recent debate concerning "the ability of the police to make unannounced sweeps of housing projects where danger is a pervasive presence," she displays a measure of the left-liberal myopia that elsewhere she quite effectively attacks.

This would have been an appropriate place for indicating the sort of reforms that a reinvigoration of local responsibility might entail. In this connection, Elshtain might have explored a proposal recently advanced by Robert Cottrol of the Rutgers School of Law at Camden that the heads of households within such projects be armed and drilled as a militia, that they be deputized as a posse comitatus, and that they be given considerable responsibility for cleaning up their own neighborhoods.

Instead, she criticizes the lawyers and editorial writers who worry about the civil liberties of those who live in the projects, and she launches an assault on the opponents of gun control. It never seems to cross her mind that, within the Whig political culture from which the American regime takes its origins, there is a connection between adult citizenship and the bearing of arms and that, in our larger cities, the housing projects are dangerous precisely because the people who live there are passive adherents to "a 'client-compliance culture,'" are disorganized, and have been denied the means of self-defense. Would it not be appropriate for "a new social covenant" to include within its provisions the presumption that individuals within a given locality should bear some considerable responsibility for their own security?

THE SECOND OF ELSHTAIN'S FIVE LECtures is the most interesting and coherent of the lot. In it, she argues that the feminist insistence that "the personal is political" contributes mightily to the corruption of both public and private life, to the extension of "the therapeutic powers of the state," and to the emergence of a quasi-totalitarian ethos within the society at large. In this connection, she quotes to good effect Milan Kundera's contention

that there is a "magic border" between "intimate life and public life...that can't be crossed with impunity," since anyone "who was the same in both public and intimate life would be a monster...without spontaneity in his private life and without responsibility in his public life. For example, privately to you I can say of a friend who's done something stupid, that he's an idiot, that his ears ought to be cut off, that he should be hung upside down and a mouse stuffed in his mouth. But if the same statement was broadcast over the radio spoken in a serious tone—and we all prefer to make such jokes in a serious tone—it would be indefensible."

America is not pre-1989 Czechoslovakia, Elshtain is quick to remark. In it, there is nothing precisely equivalent to the sort of "terror" that Kundera had in mind. Our officials do not tape remarks made over the kitchen table for subsequent broadcast on the radio. But the current hysteria concerning battered women points in a similar direction: "Mandated counseling, even behavioral conditioning of violent or 'potentially violent' men, coupled with compulsory punishment and no appeal, are common parts of the panoply of interim proposals that have been made."

In these proposals, Elshtain finds echoes of the social-hygiene movement of the late 19th and early 20th centuries in which attempts were made to police and restrict feminine sexuality to "certain standards of class and ethnicity," and black men were accused of "reckless eyeballing" while Italians were suspect as "seducers" and Chinese were regarded as potential "white slavers."

IN THE SAME SPIRIT, ELSHTAIN POINTS TO the dangers inherent in the sort of "identity politics" practiced by the gay liberation movement in which "one's private identity becomes who and what one is in public, and public life is about confirming that identity." This is, she points out, a recipe for civil war, for "those who disagree with my 'politics,' then, are the enemies of my identity." That "the word of choice" in the polemics launched by those demanding public confirmation should be "enraged" is only logical—for what is at stake when politics is understood as "an eruption of radical feelings" is nothing less than everything.

It is consistent with "the politics of democratic civility and equity," Elshtain argues, for society to accord "all citizens, including gays,...a right, as individuals, to be protected from intrusion or harassment and to be free from discrimination in such areas as employment and housing." It is not consistent with that form of politics for a gay or for anyone else to demand "full public sanction of his or her activities, values, beliefs, or habits."

The quest for public validation causes such an individual to put "his life on display" and it gives rise to an "expressivist politics" in which he opens "himself up to

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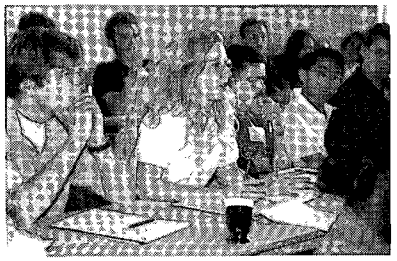

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publicity in ways that others are bound to find quite uncivil" since "the boundary of shame" is breached. There is, as she puts it, a real distinction between "flaunting one's most intimate self" and "arguing for a position, winning approval, or inviting dissent as a citizen." Public deliberation presupposes civility, and that in turn depends on the maintenance of an atmosphere of restraint defined by shame, privacy, and concealment.

In her subsequent lectures, Elshtain examines multiculturalism with an eye to radical egalitarianism and to the defects of our affirmative-action policies. She surveys earlier discussions of democracy in Pericles, Plato, Aristotle, and Hobbes, and on the left and right in more recent times. She explores what she calls "democracy's enduring promise." But she does not rise again to the level that she attains in her second lecture, and it is not difficult to see why.

Missing from Elshtain's argument is clarity concerning the ends and purposes of politics and government. Her vague references to the need for "a new social covenant" cut off discussion right where it should begin. Elshtain rejects the illiberal politics of premodern times because it was predicated on a failure to distinguish what is properly public from what should remain private—it presupposed that it is the task of government to shape character and identity.

BUT SHE IS ALSO UNSATISFIED WITH THE old liberal understanding that restricts politics to the protection of life, liberty, and property. Nowhere in her lectures does one find anything like the sentence in Thomas Jefferson's First Inaugural Address praising as "the sum of good government...a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned." Nowhere does one read anything even remotely comparable to the passage that Jefferson inserted in his draft of the Kentucky Resolutions of 1798, arguing that "confidence is everywhere the parent of despotism," that "free government is founded in jealousy, and not in confidence," and that "it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power." Indeed, nowhere—in a book chiefly concerned with the state of American democracy—is Jefferson even mentioned.

In the place customarily accorded the author of the Declaration of Independence stands Martin Heidegger's student Hannah Arendt. Elshtain makes much of the contrast that Arendt drew, in her book *On Revolution* (1963), between the French and the American Revolutions, and she follows Arendt in asserting that the former was concerned with "generic, unlimited 'rights of man'" while the latter was launched in pursuit of "the rights of freedom and citizenship" and was sustained by the conviction "that power comes into being when 'people...get together and bind themselves through promises, covenants, and mutual pledges'" and that "'only such power, which rests on reciprocity and mutuality,'" can be "'real power and legitimate.'"

Such a historical claim cannot be defended. To entertain it, one must act as Arendt did: One must resolutely ignore the second paragraph of the American Declaration of Independence, one must deny the crucial role played during and long after the American Revolution by the notion of the natural rights of man, and one must avert one's gaze from the influence exercised by Thomas Jefferson and the American example in shaping the French national assembly's Declaration of the Rights of Man.

Much can be learned from a comparison between the two revolutions. The differences are quite significant and go far toward explaining the subsequent history of the countries in which they took place. But they do not turn on the issue identified by Arendt, and Elshtain's error in this particular is indicative of the confusion underlying her inability to articulate what her "new social covenant" involves.

"Political power does not explode out of the barrel of a gun or flow from the dripping blade of a guillotine," Elshtain informs us. "Rather, it comes into being when men and women, acting in common as citizens, get together and find a way to express their collective hopes and possibilities." For Elshtain, the crucial example is the American civil rights movement of the 1960s. Its politics cannot, she insists, be confined to the political issues it explicitly addressed. To understand what took place, one must focus on the achievement of "freedom as collective liberation from bondage" and on what one historian calls the "necessary transformation of the self experienced by those actively engaged in direct action." Elshtain is persuaded that it would be a blunder to "see such solidaristic freedom and self-transformation as merely peripheral to 'the explicit goals of liquidation of racial discrimination and black disenfranchisement,'" for to do so would be "to lose the ethical power and historic complexity of the civil rights struggle."

HERE LIES THE SOURCE OF ELSHTAIN'S confusion. Those who organized and joined the civil rights movement justified their resort to civil disobedience by appealing to the principles enshrined in the Declaration of Independence. Of "solidaristic freedom and self-transformation," in these appeals, they breathed not a word—and for good reason. The respect for one another's rights is what grounds civility and makes it possible for us "to reach disagreement" without slaughtering one another. The search *through politics* for "solidaristic freedom and self-transformation" is plainly incompatible with this: It directly leads to the "identity politics" that Elshtain abhors. The quest for "self-transformation" and for "freedom as collective liberation from bondage" is, in fact, perfectly consistent with "the current construction of 'difference' as a form of group homogeneity that brooks no disagreement or distinction *within* and can maintain itself only as a redoubt *against* threatening 'enemies' from without."

At the heart of the new tribalism so visible within today's academy and be-

yond is the same warmed-over existentialism that Elshtain's mentor Hannah Arendt purveyed in her books. Jacques Derrida and Jean-François Lyotard may be the proximate sources of the postmodern mentality, but the fountainhead for their thinking—and for Arendt's as well—is the Martin Heidegger who sought to practice the politics of "solidaristic freedom and self-transformation" by embracing the National Socialist cause.

In 1933, Heidegger's compatriots, "acting in common as citizens," had gotten together and found "a way to express their collective hopes and possibilities." In Arendt's demand that power rest on "reciprocity and mutuality," there is no ground for denying that what Heidegger and his fellow Germans did was "legitimate."

Jean Bethke Elshtain needs to rethink her argument from the bottom up. To discover the foundations for the civility that is, as she quite rightly asserts, crucial to the process of public deliberation within a liberal democratic society, one need only study the American Founding Fathers. Nowhere do they deny that politics can be ennobling. Their very activity presupposed as much. Nor need one doubt that the Revolution required of Americans a measure of solidarity and that the revolutionary experience was for many transformative. Yet nowhere did our Founders advocate revolution or even "direct action" as such.

Instead, they espoused limited government. For instance, in stipulating that taking a religious oath would not be a prerequisite for holding federal office, they signalled their commitment to the view that "self-transformation" and the pursuit of "freedom as collective liberation from bondage" are best conducted outside the political sphere—in churches, in families, and in private associations.

It was, as they saw it, not enough that Americans, "acting in common as citizens," should come together and "find a way to express their collective hopes and possibilities." There had to be principles, lasting principles, stipulating which "collective hopes and possibilities" can properly be pursued in the political arena and which must be relegated to the private sphere.

The vagueness and incoherence that beset Elshtain's book and the communitarian movement as a whole arise from an unwillingness on the part of some of left-liberalism's most acute and unsparing critics to accept and endorse the fundamental principles underpinning the limits and restraints that they recognize as essential to civility within a liberal democracy such as our own.

Paul A. Rahe is Jay P. Walker Professor of American History at the University of Tulsa. His book Republics Ancient and Modern: Classical Republicanism and the American Revolution (1992) *was reissued last summer by the University of North Carolina Press in a three-volume paperback edition.*

Liberal Elites

by Steven Hayward

In Defense of Elitism, by William A. Henry III, New York: Doubleday, 212 pages, $20.00

The Revolt of the Elites and the Betrayal of Democracy, by Christopher Lasch, New York: W.W. Norton, 276 pages, $22.00

THE UNITED STATES, A NATION founded by a self-conscious elite, is the most anti-elitist of nations. This is one of the paradoxes that has made the nation thrive. Elitism, however defined, is of course coextensive with all po-

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litical and social life. The classical understanding of the hierarchy of human excellence, as most notably illuminated in Aristotle's *Nicomachean Ethics*, is what made political life and progress possible.

But the very reference to the classical origins of the idea of human excellence, with its obvious implication of a division between superior and inferior, brings to mind one of the variations on elitism that has long been a pejorative: aristocracy. The common modern meaning of aristocracy suggests the institutionalized elitism of heredity or wealth that tends over time to corrupt both politics and creativity. It is the great innovation of liberal democracy to replace aristocracy with meritocracy; recall Thomas Jefferson's famous correspondence with John Adams about why the United States could dispense with an artificial aristocracy (which Adams desired to have) in favor of a "natural aristocracy" of excellence and virtue.

The flaw of democracy, as Tocqueville (an elitist par excellence) foresaw 150 years ago, is that the idea of equal rights—the central premise of democracy—would dissolve over time into an extreme, levelling egalitarianism. "The ills produced by extreme equality," Tocqueville warned, "only become apparent little by little; they gradually insinuate themselves into the body social." Liberty requires effort and sacrifice, while "equality offers its pleasures free." Neither gentle reason nor ferocious remonstrance seems to dissuade someone who has fallen under the egalitarian spell. "It is no use telling them that by this blind surrender to an exclusive passion they are compromising their dearest interests," Tocqueville warned. "They are deaf."

This background is useful in evaluating these two recent offerings on the subject of elites and elitism, which might seem to represent examples of authors miraculously cured of egalitarian deafness. Both William Henry, a senior writer and drama critic for *Time* magazine, and Christopher Lasch, a sociologist, have fashionably "liberal" credentials. Henry's plaintive passage boasting of being a Jesse Helms–hating "registered Democrat" and

Christopher Lasch: He approves of elitism only if the elites are conscious doers of good works.

a card-carrying member of the ACLU brings to mind Phil Ochs's parodic tune, "Love Me I'm a Liberal." Lasch's 1978 book, *The Culture of Narcissism*, was rumored to be Jimmy Carter's favorite book and the inspiration for his notorious "malaise" speech.

Both Henry and Lasch offer up attacks on egalitarianism that sound like something from the pen of the young William F. Buckley Jr. Henry's book, clearly the better of the two, assails "quixotic liberals," "liberal tolerance gone haywire," and agrees that "we have taken the legal notion that all men are created equal to its illogical extreme." He begins and ends his book by announcing that his central theme is that "the wrong side (egalitarianism) has been winning." Lasch is less explicit about egalitarianism, but nonetheless offers that the "cultural diversity" movement (whose motive force is egalitarianism) is "clearly a recipe for universal incompetence."

The best parts of both books could be taken as clear signs that at least among a few honest-minded figures aligned on the left there is growing recognition of the foolishness of egalitarianism, and perhaps a new appreciation for liberty. Henry's book especially offers up many aphoristic attacks on egalitarianism that could have come from a radio talk show host. In some places, Henry throws down the gauntlet

KEN HAWKINS

with in-your-face prose that is clearly intended to provoke more than persuade. The most widely quoted sentence in the book comes in a passage attacking the egalitarian premises of cultural diversity, where he bluntly notes, "It is scarcely the same thing to put a man on the moon as to put a bone in your nose."

HENRY ARGUES THAT WERE WE TRULY consistent, "Native Americans" would have to be called "Siberian Americans." He refers to the disabled-rights movement as "crippo liberation." He attacks the central rhetorical message of Democratic Party, Clinton-style politics, as the insinuation that "the gains of the rich are somehow ill-gotten" and behaving "as though all of one's salary belonged to the government in the first place, and it is only Uncle Sam's beneficence that determines how much one should keep." Most significantly, Henry concludes, "The missing element in every phase of American life, from education to culture to the thicket of identity politics, is what used to be called rugged individualism."

Lasch's book is more of a thematic muddle, just like most of his previous books, which political scientist Stephen Holmes once described as "glum mood pieces." But even allowing for the usual quotient of silly postulates the readers have come to expect from Lasch, there are still many arguments in his book to celebrate. Like Henry, Lasch deplores the aggrandizement of "self esteem," sanitized speech, and the "caring class" that feeds off these therapeutic nostrums. He laments the abolition of shame. He attacks Robert Reich, comparing his brand of interventionist, managerial economics with the mismanagement of the Vietnam War by Robert McNamara's "whiz kids." He criticizes at length the legacy of Horace Mann, blaming this usually revered figure for setting public education on direct course toward the blandness and mediocrity that afflicts it today. Public education, Lasch argues, "has never recovered from the mistakes and misconceptions built into it at the very outset."

The strongest common point of both books is their recognition that preserving racial grievances has become the vital necessity of egalitarianism and the multicultural movement, regardless of whatever real racism there is in society. Henry criticizes the "addictive attachment to past grievances," while Lasch argues that "the thinking classes'...eagerness to drag every conversation back to race is enough in itself to invite the suspicion that their investment in this issue exceeds anything that is justified by the actual state of race relations." Henry and Lasch recognize that the political utility of race baiting by the left, and the policies it justifies, are now causing rather than curing racial divisions.

But while there is much to appreciate in *In Defense of Elitism* and *The Revolt of*

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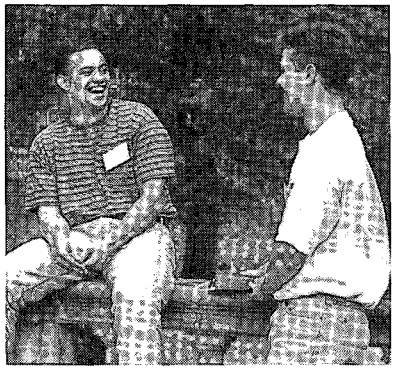

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the Elites, both books are a bit like the cliché about Chinese food: filling but not really satisfying. In the case of Lasch, this criticism is easy to make out, because of his soft-collectivist communitarianism. For every worthy aphorism, there is a blooper that gives away the game.

Luxury is morally repellent, Lasch argues at one point, and incompatible with democracy. There is some of the old nonsense about the "third way" between open markets and the welfare state that died a much-deserved death in the 1980s. He also waxes romantic about populism, suggesting vaguely that populism could be a noble and uplifting basis on which to renew American political life. But he does not offer any reflections on the usual face of populism, which might be summarized in two words: Ross Perot. Populism is occasionally justly aimed—as in the case of the tax revolt—but more often, as the case of Perot shows, populism is simply the fancy dress name for demagoguery.

At the heart of Lasch's argument about the "revolt" of our elites is the idea that elitism in a democracy is only acceptable if the elites are conscious doers of good works. John Rawls receives only a single mention in the book, but the spirit of his famous argument is pervasive throughout the book: People may cultivate superior talents only if they can be proved to benefit the disadvantaged parts of society.

While it may be reasonable to speak of "reciprocal obligations" as a voluntary matter, an individual ethic that is praiseworthy on its own terms, you get the uneasy feeling reading the communitarian followers of Lasch that they would not hesitate, if they had the power, to try to institutionalize their vision of noblesse oblige.

Lasch doesn't like meritocracy, though he stops short of the common invective that all success is due to luck or sinister calculation. He is really annoyed at the mobility of the elites made possible by modern markets and technology. Whereas old money elites tended to be rooted in some local place, the new elites are rootless cosmopolitans who have more in common with their Asian and European commercial partners than with their American neighbors. The implication is that liberal guilt is a fine thing, and the elitism that Lasch, and to a more limited extent Henry, would obviously approve is the elitism of the Kennedy family: It's OK to make a pile as long as you feel guilty and "give back" other people's money.

Lasch doesn't formulate actual public policies, but he has always made a better Jeremiah than a Moses. The same complaint cannot be made of Henry. Henry not only offers specific criteria for recognizing a superior culture, he also offers the radical suggestion that the number of students who receive a college education be cut nearly in half. His favorite target for the education ax are the "community" colleges, which, he notes, used to be called "junior" colleges. And he argues that tenure for college faculty should be abolished: "Competing for one's job on an on-going basis could introduce a little more healthy elitism into the professorial lifestyle." If acerbic barbs about putting bones in noses don't set off the chattering class, this idea surely will. Henry is surely right, as David Frum has also argued recently, that much of the egalitarian excess of our time derives its energy from the bloated higher-education establishment.

It needs to be remembered that it was precisely because of the liberal collaboration with the crusade for the redistribution of income that the subsequent absurdities of radical egalitarianism became possible.

WHILE BOTH BOOKS' CRITICISMS ABOUT egalitarianism are most welcome, what's missing is a recognition that contemporary liberalism paved the way for our current condition by having no immune system to ward off the tendency toward extremism. It needs to be remembered that it was precisely because of the liberal collaboration with the crusade for the redistribution of income that the subsequent absurdities of radical egalitarianism became possible.

There is little recognition that classical liberal warnings about the poisonous effects of egalitarianism were right and should have been heeded decades ago. Henry only grudgingly admits that "even lifelong liberals of an elitist bent are forced to find common cause with conservatives" on these issues. But it is probably churlish to demand mea culpas, and the long-suffering friends of liberty should perhaps celebrate newfound allies against the relentless levelling current of our time. It is bad form to check the other fellow's dog tags in the foxhole while the battle rages. (Besides, these guys could use some friendly air cover: Since both Henry and Lasch died shortly before their books were released, we can expect the left to dismiss both books as being the products of "dead white American males.")

The real defect in Henry's argument is not simply that it is more of an attack on egalitarianism than it is a defense of elitism, but that his defense of elitism seems to be a defense of elitism for elitism's sake, rather than an argument that elitism can represent a standard of excellence that is good and defensible in itself. The success of Bill Bennett's *Book of Virtues* offers evidence that such a defense would find a wide and eager audience.

Henry's criteria for a superior culture include liberty, respect for science and art, a comfortable middle-class existence, recognition of hierarchy and authority, and a useful basis for perceiving the difference between mediocrity and excellence. But for the real thing, for "elitism without tears or guilt," so to speak, readers should go back to Aristotle's *Ethics*.

Contributing Editor Steven Hayward is research and editorial director for Pacific Research Institute.

In Praise of Porn

By Charles Oliver

Defending Pornography: Free Speech, Sex, and the Fight for Women's Rights, by Nadine Strossen, New York: Scribner, 320 pages, $22.00

Penn State officials banished this Francisco de Goya reproduction from a classroom wall, following a complaint from professor Nancy Stumhofer that it made her and her female students "uncomfortable."

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By some estimates, Americans rented almost 800 million pornographic videotapes last year. Women, either singly or as part of couples, took home about half of them. Since porn seems to be very much a "guy" thing, one may reasonably wonder whether watching a skin flick is the first choice of the women included as "part of couples." But from my observations of couples renting x-rated movies on a Friday night at my local video store, most women take a very active part in choosing the tapes. They appeared to have very definite likes (Rocco Siffredi), very definite dislikes (Ron Jeremy), and one common complaint (you can't tell anything about the movie from the box cover).

Obviously, not all women enjoy pornography. But a substantial number certainly do. For most of the past 20 years, however, a certain segment of the feminist movement has tried to marginalize these women, either by denying that they exist or by telling them that they suffer from false consciousness. Only women brainwashed by the patriarchy could be deluded enough to think they really enjoyed porno, goes this line of thinking. Widespread media attention to such anti-sex zealots as Andrea Dworkin and Catherine MacKinnon makes it seem as if their beliefs are universally shared by feminists.

In fact, there are many feminists who disagree with the Dworkin-MacKinnon line. Porn star Nina Hartley, activist Susie Bright, and journalist Lisa Palac, among others, have stepped forward to defend pornography and women's rights to enjoy and to participate in it. Of course, you will never see them counter Dworkin or MacKinnon face to face, since those two refuse to debate other women on the subject.

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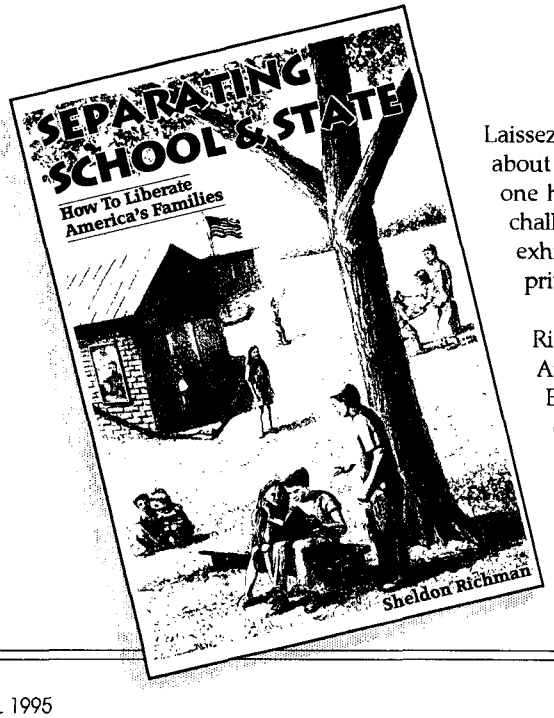

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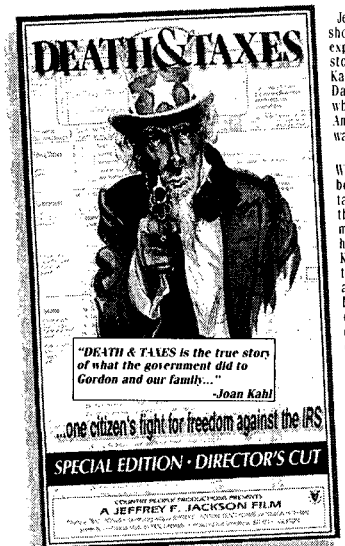
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The latest feminist case for porn is *Defending Pornography*, by ACLU President Nadine Strossen. Strossen makes an important, if ultimately flawed, contribution to the ongoing feminist debate on the matter. Pay careful attention to the title of her book: Strossen does not merely defend free speech—she makes a positive case for pornography itself. Porn, says Strossen, does not play an especially strong role in engendering sexism in society. In fact, for many women, it has a positive impact, helping them get in touch with their sexuality. Indeed, even the Meese Commission agreed that sexually explicit images can have such therapeutic effects.

Claiming women can *never* consent to pose for sexual images denies women full citizenship and reduces them to the status of children or the mentally deficient.

This line of reasoning stands in stark contrast to the Dworkin-MacKinnon position, which holds that pornography fosters sexism, upholds patriarchy, and causes rape. They define sexually explicit speech as a form of sexual discrimination and propose changing laws so that "victims" of pornography can bring a variety of civil suits. For example, if a rapist claims that a particular book or movie inspired his crimes, then his victim would be able to sue the work's producers and distributors for damages. Or if a woman is coerced into making a pornographic film, she would be able to sue the people involved. Dworkin has even argued that female participation in porn is in fact proof of coercion—even if no threats or force were used and even if the women say they participated freely.

Strossen agrees that coercing women into making pornographic films should be illegal and notes that it is in fact already illegal. But she argues that claiming women can *never* consent to pose for sexual images denies women full citizenship and reduces them to the status of children or the mentally deficient.

Indeed, she notes that the model anti-pornography legislation drafted by MacKinnon and Dworkin states, "Children are incapable of consenting to engage in pornographic conduct, even absent physical coercion, and therefore require special protection. By the same token, the physical and psychological well-being of women ought to be afforded comparable protection."

STROSSEN ARGUES PERSUASIVELY THAT the feminist censorship movement is rooted in a distrust of sex itself. "Compare victims' reports of rape with women's reports of sex. They look a lot alike," writes MacKinnon. Dworkin has offered such observations as: "One of the differences between marriage and prostitution is that in marriage you only have to make a deal with one man"; "Romance...is rape embellished with meaningful looks"; "In seduction, the rapist bothers to buy a bottle of wine."

Strossen points out that the Dworkin-MacKinnon world view is essentially old-fashioned sexual conservatism: that sexuality is male, not female; that men are raving beasts; that men inflict sex on women; and that sex is inherently degrading to women. Indeed, conservative censors have appropriated Dworkin and MacKinnon's arguments about pornography and have tried to enact their ideas into law in several places. Talk about strange bedfellows.

Censors, whether feminist or conservative, operate under the mistaken impression that sexually explicit materials are somehow the root cause of anti-social behavior. To that end, they cite studies showing that communities with high rape rates have high circulation of pornographic magazines. But those same studies also show that these same communities have higher circulations of *all* types of male-oriented magazines. No one has yet called for banning *Field and Stream* because it causes rape.

More to the point, less ideologically driven researchers have been unable to confirm these patterns. And Murray Straus, one of the nation's leading researchers on domestic and sexual violence, has found that there is actually a positive relationship between the circulation of pornographic magazines and his index of gender equality, a composite of 24 indicators of political, legal, and economic equality.

Strossen stresses that even though obscenity laws are passed in the name of "protecting" women, they have historically been used to limit speech and writings beneficial to feminist causes. For example, many early books and pamphlets advocating birth control were outlawed as obscene. Strossen reports that nowadays, many law professors are foregoing discussion of rape laws, fearful of stepping into the quagmire of sexual harassment created by MacKinnon and Dworkin. That can hardly be considered an advance for women's rights. And after the Canadian Supreme Court incorporated Dworkin-MacKinnon logic into that country's obscenity laws, authorities there used their new powers to target sexually explicit works by gay and lesbian authors. In the ultimate irony, Dworkin's own works, which are filled with violent sexual images, have been seized by Canadian authorities as violating the very law she and MacKinnon helped create.

STROSSEN MAKES A PERSUASIVE CASE against Dworkin and MacKinnon, but ultimately her argument, like that of many other feminist critics of censorship, is undermined by her statism.

This is most evident in her discussion of sexual harassment. She argues that current law, by focusing on sexual behavior, is misguided. Instead, she argues that the law should target behavior that is sexist, a nebulous concept.

The ACLU has always argued that bad speech should be countered with more speech. So why shouldn't bad, but non-aggressive, behavior not also be met with more speech and with other private behavior? What business is it of the government that some private employers will not hire or promote women?

On a more fundamental level, why should the right of speech be privileged against government interference in ways that constitutional rights of property, contract, and voluntary association are not? If government can ban certain non-aggressive private actions in order to further noble ends, why can't it also ban speech when such censorship might advance a good cause? The leap in logic is not that great. And as long as feminists grant government that power, they will be agreeing to the basic political principle of their pro-censorship sisters.

Contributing Editor Charles Oliver writes for Investor's Business Daily.

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Fourth and Long

By Thomas W. Hazlett

Engineering Clinton's comeback

I KNOW THAT THE PRESIDENT HAS EVeryone and his half-brother giving him advice on how to come out of his nosedive in popularity and become the Harry Truman of 1996. He's been advised to move back to his "base," and there has been a great debate on what his "base" is. He's been told to talk less about his underwear and to be "more presidential." He's been counseled to focus on foreign affairs, that winning formula for reelection so ably exploited by Mr. Clinton's predecessor, what's-iz-name.

All nonsense. What is really needed is a radical reelection shtick, a ploy so bold and over the top that it stuns the conventional wisdom and allows Bill Clinton to belly-up to middle-class Americans on a gut level. For, despite vast rhetorical skills, the pieties the president mouths are so much Muzak to the American people—perfectly smooth and melodious when uttered in a State of the Union speech or a *Larry King Live* call-in, wholly forgotten by the first feminine hygiene spray commercial. Mr. President, it's time for dramatic action. Another one of your "change" speeches ain't gonna do it, wouldn't be prudent.

So here it is: Putting Reelection First: An Agenda for America.

• *Tell the people you're sick of the hypocrisy in Washington and won't stand for reelection.* You'll be lying, of course, but this is the way to begin to turn it around. At a dramatic White House press conference with a big picture of Abe Lincoln in back of you (he basically only served one term and had people shooting at him, pretty much like you), state that the only reason you're not resigning is that the thought of that sanctimonious prig, Al Gore, running things is too much for you to stomach. Apologize to the country for squandering the chance to help America, and for making everybody grumpy, and for getting so many of your old Arkansas friends indicted. Let out a big sigh, allow a tear to form, and comment that you feel so much better now that it will all be over soon. *Soundbite payoff:* You're the outsider again, going against the insiders from the inside-out.

• *Dump Hillary and shack up with Madonna.* This will be the first measure you've taken where people really believe your heart's in it. And since you've already admitted on national television that you've caused a lot of grief in your marriage, why not be a decent American and divorce Hillary so she might get on with her life? Being tied down to a lame duck is no way for her to spend the prime of her income-earning years. *Soundbite payoff:* "I cannot go on living a lie." Sure you could—but this will be way more laughs.

• *Act like you're a victim of the special interests like Jerry Brown.* This is a no-brainer (viz., Jerry Brown): When you get bounced out of traditional politics by the voters, act like you never really wanted to play their game, anyway. *Soundbite payoff:* You scapegoat the Big Boys for your incompetence and look morally superior to the lowlifes grubbing for power—just like you.

• *Re-register Republican.* Tell us that the American people spoke loudly in November, and that you're going to be taking your orders from "the people" from now on. Most office holders couldn't get away with this kind of switch, because it would destroy their credibility with the voters—but you haven't had that problem since Day 10 of your administration. People might even say, "Oh, so he's really a Republican. No wonder he's had so much trouble masquerading as a Democrat. Maybe now he'll get something done." This looks so crazy no one will know you're just playing the numbers: If your poll ratings don't go up, switch back to the Democrats, saying, "I'm not wedded to partisan politics—I'll do whatever works for the American people." *Soundbite payoff:* You can bravely challenge other officeholders to follow in your footsteps, mocking them when they resist as "lacking the courage to change."

• *Fire the entire cabinet.* Trump up a scandal about each and every one of them pilfering from the U.S. Treasury, getting the FBI to issue a report on the matter just like you did when you wanted to unload the White House travel agents. Ask the Republicans to hold hearings on every cabinet department, and appoint 160 special prosecutors to "look into everything." This will take the heat off of Whitewater, and bury all that bothersome ethics stuff in a sea of paper. Chances are that at least one or two of your current cabinet officials are innocent, which ought to create a public backlash against "the witch hunts going on in Washington." That can't but help you on your other matters, Mr. President. *Soundbite payoff:* "I don't care if I have to get rid of my entire administration to make this government work."

Admittedly, Mr. President, this reelection strategy is a longshot. But all this "move left, seize the center, shift right" advice is hooey: Who's gonna believe your *nth* set of core values is the real you? But people will believe that you're desperate, so run with that: "Bill Clinton, A Desperate Man for Desperate Times." Realistically, chances are you won't make it whatever you do from here on in. The question then becomes: Would you rather get beat with Hillary or Madonna? Follow your heart, Mr. President. Move to your hard-core values.

Contributing Editor Thomas W. Hazlett teaches economics and public policy at the University of California at Davis.

First there was Reagan . . . Now there's Newt.

Question: How can we ensure that there will be an actual decrease in government?

Answer: Hold the Republicans' feet to the fire of

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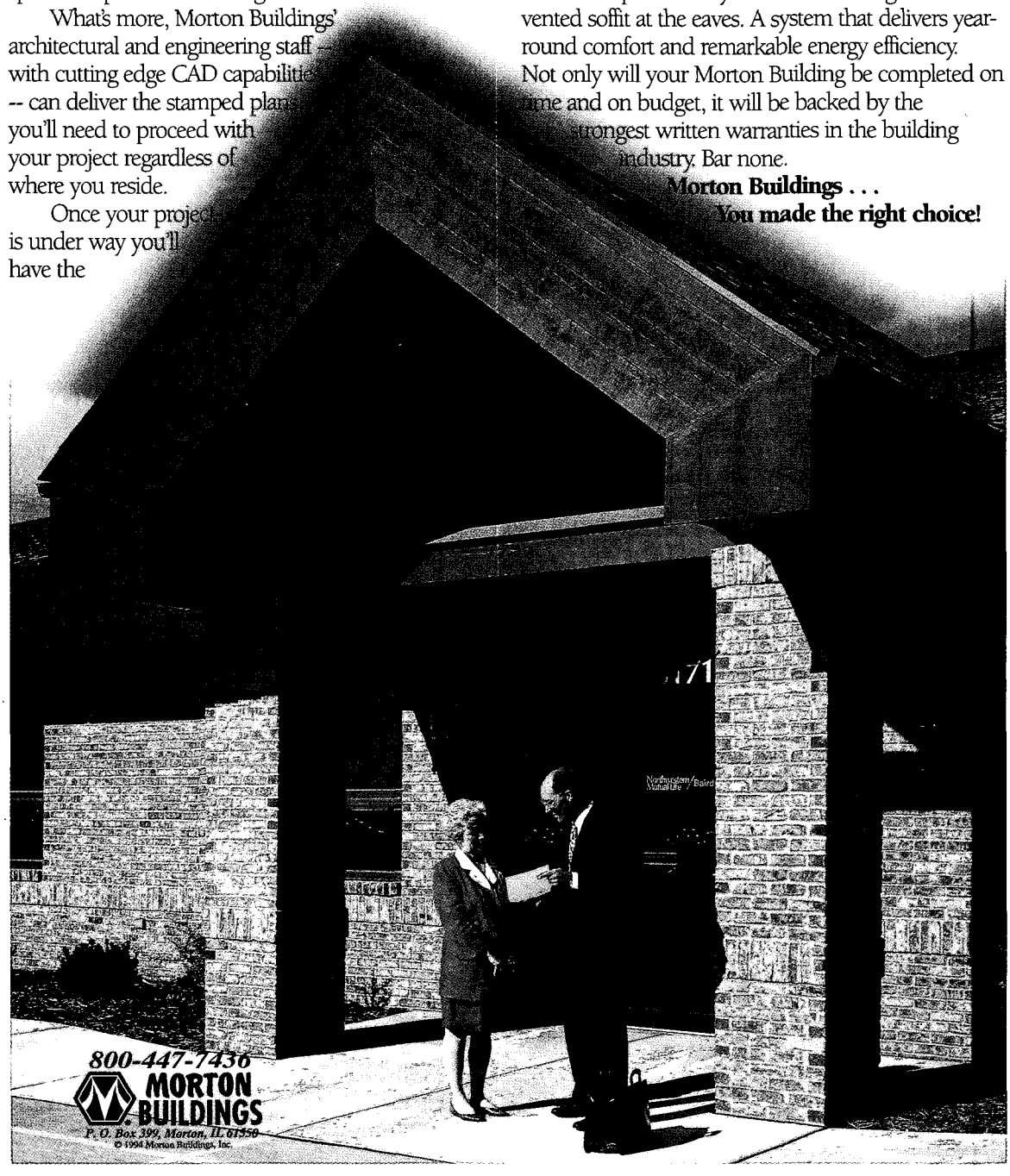

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